



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On May 28, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for double the security deposit pursuant to Section 38 of the Act, and seeking to recover the filing fee pursuant to Section 72 of the Act.

The Tenant attended the hearing; however, the Landlord did not make an appearance during the 32-minute teleconference hearing. The Tenant provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord’s address listed on the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) by registered mail on June 6, 2019 (the registered mail tracking number is on the first page of this decision). The tracking history indicated that a notice card was left at the delivery address for pickup of this package on June 17, 2019 and a final notice was left at this address on June 25, 2019 indicating that the package would be returned to sender if not collected within 10 days. This package was then returned to the sender on July 3, 2019 as it was not retrieved by the Landlord. She also submitted, as documentary evidence, a receipt confirming service of this package and a photograph of the returned package displaying the Landlord’s address. Based on this undisputed testimony and evidence, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was deemed to have received the Notice of Hearing package five days after it was mailed.

The Tenant advised that her evidence was served to the Landlord by posting it to the Landlord’s door on August 19, 2019 and she submitted, as documentary evidence, a photograph of this service. As this evidence was served within the timeframe

requirements in accordance with Rule 3.14 of the Rules of Procedure and in accordance with Section 88 of the *Act*, I am satisfied that the Landlord was sufficiently served with the Tenant's evidence. This evidence was accepted and considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to a Monetary Order for compensation based on the Notice?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant stated that the most current tenancy started on February 1, 2018 for a fixed length of time ending on February 1, 2019. The tenancy ended when the Tenant gave up vacant possession of the rental unit on February 28, 2019 due to being served the Notice. Rent was established at \$1,575.00 per month and was due on the thirty-first day of each month. A security deposit of \$787.50 was paid. A signed copy of the tenancy agreement was submitted, as documentary evidence, for consideration.

She stated that the Landlord sent her a text on December 31, 2018 advising her that she would be receiving the Notice and then she found a copy of the Notice on her door that day. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The Landlord indicated on the Notice that the effective date of the Notice was February 28, 2019. She submitted, as documentary evidence, a copy of this Notice for consideration.

She advised that the Landlord purchased the rental unit on or around October 2018 and her tenancy transferred from the previous landlord. She stated that the Landlord advised her that he had two little boys and that they would all be moving into the rental unit. She submitted that the Landlord also advised her that he had three vehicles as well. She testified that nothing has been done to the rental unit since she gave up vacant possession, that the foliage has overgrown to the point that neighbours have complained about the condition of the property, and that as a result, the municipality has been notified. She submitted pictures, as documentary evidence, to support this position. She advised that she checks the mailbox but has never seen any mail for the Landlord, that she has never seen any garbage at the rental unit, that there have been no cars parked there ever, and that she has not observed any children's toys or any sign of anyone living there, which a neighbour corroborates. She stated that a neighbour has informed her that, as of May 24, 2019, no one has moved into the rental unit, that the Landlord is in the process of developing the area, and that a contractor is in the process of moving into the rental unit. Finally, she stated that she still has the keys to the rental unit and has contacted the Landlord to return them; however, he ignores her messages.

In her Application, the Tenant indicated the following:

I am unsure of the amount of monies that would be added to this. On good faith we believed the landlord, Nav, when he told us he wanted to move from a basement suite into the house with his sons, very quickly. We requested three days extension on moving out, and he agreed with the stipulation and the statement that the weekend was hard because he needed to move him and his boys in. This was March 1 - 3. There has been no one at the house. The contractor said he will be living there next month.

During the hearing, the Tenant confirmed that her position is that she is owed compensation in the amount equivalent to 12 months' rent (**\$18,900.00**) pursuant to Section 51(2) of the *Act* as the Landlord did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

The Tenant also advised that she provided her forwarding address in writing to the Landlord on February 28, 2019 but she did not have proof of this. She then posted a note on the Landlord's door at the beginning of April 2019 containing her forwarding address in writing and she submitted, as documentary evidence, a photograph of this posting. She is seeking compensation in the amount of **\$1,575.00** because the Landlord

did not comply with Section 38 of the *Act* with respect to dealing with the security deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the solemnly affirmed testimony and undisputed evidence before me, I am satisfied that a forwarding address in writing was provided by the Tenant on or around the beginning of April 2019. Consequently, pursuant to Section 38 of the *Act*, I am satisfied that the Landlord was deemed to have received the Tenant's forwarding address in writing three days after it was posted. I find it important to note that Section 38 of the *Act* clearly outlines that once a forwarding address in writing is received, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain any portion of the deposit without the Tenant's written consent.

As the undisputed evidence before me is that the Landlord did not return the security deposit in full or make an Application to keep any portion of the deposit within 15 days of being deemed to have received the Tenant's forwarding address in writing, I find that the Landlord illegally withheld the deposit contrary to the *Act*, and did not comply with the requirements of Section 38.

Consequently, I am satisfied that the Tenant has substantiated a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenant a monetary award in the amount of **\$1,575.00**.

Section 49 of the *Act* states that the Notice may be served because "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close

family member of the landlord intends in good faith to occupy the rental unit.”

With respect to the Tenant’s claim for twelve-months’ compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated December 12, 2018 and Section 51 of the Act changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 (2) *Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that:

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months’ rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only).

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances.

Finally, the policy guideline outlines the following about extenuating circumstances: "An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

When reviewing the Tenant's Application, while the Tenant did not include the specific amount of 12 month's rent compensation that she was seeking, I am satisfied from her description of the issue that her claim for compensation was related to being served the Notice and the Landlord not using the property for the stated purpose. In addition, a copy of the Notice was submitted as documentary evidence where it is clear to me that the Landlord served this Notice and checked off the reason for service of the Notice. Furthermore, page three of the Notice outlines information with respect to monetary compensation if the Landlord does not use the property for the stated purpose. Consequently, based on all these factors, I am satisfied that it is entirely clear from the Tenant's Application that the Landlord would have understood that the nature of the

Tenant's claim pertained to the 12 month's rent compensation provision pursuant to Section 51 of the *Act*.

With respect to this issue, what I have to consider is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Based on the totality of the solemnly affirmed testimony and undisputed evidence before me, I am satisfied, on a balance of probabilities, that the Landlord failed to use the rental unit for the stated purpose, as per the *Act*, within a reasonable period of time after the effective date of this Notice. In addition, there is no evidence before me that there were any extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose. Consequently, I am not satisfied that there were any unforeseen or extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

Ultimately, I am satisfied that the Tenant has substantiated the claim that she is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$18,900.00**.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of the security deposit	\$1,575.00
12 months' compensation	\$18,900.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$20,575.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$20,575.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 11, 2019

Residential Tenancy Branch