



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT MNSD**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant to section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Both the landlord and the tenants attended the hearing. The tenants were represented by an advocate, LP ("tenant"). The landlord acknowledged being served with the tenant's application for dispute resolution and the tenant acknowledged being served with the landlord's evidence. Neither party stated there were concerns with timely service of documents and were prepared to deal with the matters of the application.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord for being served with a 4 month notice to end tenancy?

Should the landlord return the security deposit?

Background and Evidence

The tenant provided the following testimony. The tenancy began over 20 years ago. The tenant is not sure what the original rent was, but thinks it was approximately \$400.00 or \$500.00 per month. Based on that figure the security deposit in the amount of either \$200.00 or \$250.00 is being held by the landlord. In February of 2019, when the tenancy ended, rent was \$725.00 per month.

On December 6, 2019, the tenants received a 4 Month Notice to End Tenancy pursuant to section 49 of the *Act*. The effective date on the Notice was April 6, 2019 and the

reasons provided for ending the tenancy was to perform renovations or repairs that are so extensive that the rental unit must be vacant. Under details, the landlord wrote it would be a complete inside renovation and all interior finishes would be removed and replaced with new. The landlord did not compensate the tenants with the equivalent of one month rent on or before the effective date of the notice or any time thereafter.

The tenants found a new living accommodation and on January 25th, they gave the landlord notice that they would be vacating the rental unit on February 9th. The rent for the entire month of February had been paid on their behalf through social services as both the tenants are on disability pensions. The tenants testified that the shelter portion of their disability cheque is sent directly to the landlord for convenience, but that the portion sent to the landlord as rent is deducted from their full disability entitlement.

When they moved out, they vacuumed the rental unit and cleaned it but didn't do a thorough job as the 4 Month Notice indicated the interior finishes were going to be removed and replaced. As they were moving out, the landlord entered the unit to commence renovation work. On or about March 19th, the tenants provided the landlord with notice of their forwarding address which the landlord acknowledges receiving shortly thereafter.

The landlord provided the following testimony. He became the landlord when he purchased the property from his father in law, the original landlord. Rent was originally set at \$320.00 per month and a security deposit in the amount of \$160.00 was collected from the tenants. The landlord did not return the security deposit at the end of the tenancy because the amount of damage done to the rental unit exceeded the \$160.00. The landlord alleges there was water damage from a leaking toilet causing mold to grow and leaking to the lower floor of the rental unit. The landlord did not file an application for dispute resolution with the Residential Tenancy Branch to retain the security deposit.

The landlord is moving into the rental unit to occupy it himself, however he is doing renovations to it prior to moving in. He gave the tenants the 4 month notice and does not dispute that the tenants notified him that they were ending the tenancy on February 9th. He was not provided with a forwarding address for the tenants until shortly after March 19th and could not arrange a condition inspection with the tenants.

The landlord sought advice as to whether he was required to compensate the tenants for ending the tenancy for demolition, renovation, repair or conversion when the tenants rent was paid by social services and felt confident that he was not required to do so.

Analysis

The landlord served the tenant with a 4 Month Notice pursuant to section 49(6)(b) of the *Act* which states:

A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Pursuant to section 50 of the *Act*,

- 1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by
 - a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- 2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- 3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

In this case, the landlord does not dispute that the tenants properly ended the tenancy on February 9th, by giving him 10 days' written notice to end the tenancy before the effective date on the 4 Month Notice. He also doesn't dispute that the rent was paid until the end of February 2019. The landlord submits that since the rent was paid by social services, the rent money does not need to be returned to the tenants.

Tenancy agreements between landlords and tenants govern the relationship between those parties, irrespective of where the tenant receives the funds to pay the rent. The legislation does not differentiate between tenancies between recipients of government assistance and those not receiving them. All tenancies are bound by the *Act*. Therefore, the landlord is obligated to refund any rent paid for a period after the effective date of the tenant's notice. In this case where the notice ended the tenancy for February 9th and rent was paid for an additional 19 days until the end of the month, I order the landlord to compensate the tenant ($\$725.00/28 \times 19 = \491.96) **\$491.96** in accordance with section 50(2) of the *Act*.

Section 50(3) of the *Act* indicates that when the tenant gives notice to end the tenancy after being served with a 4 Month Notice, the tenant's right to compensation under section 51 of the *Act* is not affected. For clarity, section 51(1) reads

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As the landlord has not compensated the tenants with the equivalent of one month's rent, I award the tenants **\$725.00** in accordance with section 51(1) of the *Act*.

I accept the parties' testimonies the landlord received the tenants' forwarding address shortly after it was mailed out on March 19th. In accordance with section 71 of the *Act*, I deem it was sufficiently served on the landlord on March 24th, five days after it was mailed out.

The parties agree the landlord did not return the tenant's security deposit anytime after receiving the tenants forwarding address. Although the landlord sent a letter to the tenants advising he was going to keep the deposit, he did not file an application to retain the security deposit by filing an application for dispute resolution.

Section 38 of the *Act* addresses the return of security deposits.

(1) Except as provided in subsection (3) or (4) (a), **within 15 days after** the later of

(a) the date the tenancy ends, and

(b) **the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant **double the amount of the security deposit**, pet damage deposit, or both, as applicable.

As the language of section 38(6)(b) is mandatory, I have no capacity to change it. The landlord did not comply with section 38(1) of the *Act* and must therefore pay the tenants double the security deposit.

I accept the landlord's evidence that the amount of the original deposit, taken 20 years ago is \$160.00. In accordance with section 38 of the *Act*, I award the tenants **\$320.00**.

Item	Amount
Refund of 19 days' rent in February 2019	\$491.96
One month's compensation sec. 51	\$725.00
Security Deposit, doubled	\$320.00
Total	\$1,536.96

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,536.96.

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 13, 2019

Residential Tenancy Branch