



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for a monetary order in the amount of \$34,563.00, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of double their security deposit, and to recover the cost of the filing fee.

The tenants attended the teleconference hearing, were affirmed and the hearing process was explained and they were given an opportunity to ask questions about the hearing process. Thereafter the tenants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, I refer to only the relevant evidence related to the facts and issues in this decision.

As the landlords did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated June 21, 2019 ("Notice of Hearing"), application and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail dated June 22, 2019, and that one package was sent to each of the two landlords and addressed to the mailing address of the landlords. The tenants provided two registered mail tracking numbers in evidence, which have been included on the cover page of this decision for ease of reference and identified as 1 and 2.

In addition to the above, the tenants also stated that they sent two additional packages to the landlords addressed to the PO Box provided by the landlords on the outgoing condition inspection report, which were mailed on June 28, 2019. Those additional registered mail tracking numbers have also been included on the cover page of this decision for ease of reference and identified as 3 and 4. The additional package contained the Notice of Hearing, application and documentary evidence.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The tenants testified that all four of the registered mail packages were returned and marked as “unclaimed” and “return to sender”. I find the landlords were duly served on the fifth day after mailing for packages 1 and 2 on June 28, 2019, and for packages 3 and 4 on July 3, 2019, in accordance with the *Act*. I note that refusal or neglect on the part of the respondents to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*.

Based on the above, I find the landlords have been sufficiently served in accordance with the *Act*, and that this matter is unopposed by the landlords. The hearing continued without the landlords present as a result.

Preliminary and Procedural Matters

Firstly, the tenants confirmed during the hearing that while they had only applied for \$34,563.00; \$31,500.00 of which is related to the 12 months’ compensation claim against the landlords for failing to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord’s Use of Property dated March 31, 2019 (“2 Month Notice”), the tenants clarified the following. The tenants stated that while they had not originally applied for a full 12 months of compensation as they only paid \$31,500.00 in rent during the tenancy, they were not waiving any rights under the *Act* to 12 full months of compensation under the *Act* if they were so entitled. Accordingly, I find the tenants claims to be \$39,163.00 and that the landlords would know or ought to have known that 12 months of rent under the *Act*, when rent was \$3,000.00 per month, would equal \$36,000.00. Pursuant to sections 62(3) and 64(3) of the *Act*, I amend the tenants’ claim from \$34,563.00 to \$39,163.00.

Secondly, the tenants confirmed the email addresses for the parties during the hearing. The tenants confirmed their understanding that the decision would be emailed to both

parties. The tenants were advised that any resulting monetary order, if any, will be sent by email to the appropriate party for service on the other party.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the *Act*?
- Are the tenants entitled to any other monetary compensation under the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2018 and reverted to a month to month tenancy after May 31, 2019. The tenants testified that they received the 2 Month Notice from the landlords, that they accepted the 2 Month Notice and did not dispute it. The tenants vacated the rental unit on the effective date listed on the 2 Month Notice which was May 31, 2019.

The reason stated on the 2 Month Notice is:

“The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother or child) of the landlord or the landlord’s spouse.”

The tenants testified that before they vacated the rental unit, the landlords provided notice to them of showings, which were submitted in evidence. The tenants stated that although the landlords did not place a “For Sale” sign in front of the home, it was listed for sale, which is supported by the notices the tenants submitted in evidence. In one notice dated March 2, 2019 the male landlord writes in part:

Our Realtor Justin will be coming by with potential buyers and needs access to the inside of the house at the time and day mentioned above.

The tenants stated that they were there for showings and people viewing the home were both potential buyers and potential renters, and as a result, the tenants became aware that the landlords did not issue the 2 Month Notice in good faith. In addition, the landlords submitted a sale listing of the rental property where it is listed for

\$2,288,000.00 and the two listed open houses on this sale listing are before the tenants vacated the rental unit. The sale listing is dated May 22, 2019 ("sale listing").

The tenants are seeking compensation in the amount of \$36,000.00 which is twelve times the monthly rent of \$3,000.00 pursuant to section 51(2) of the *Act* as the rental unit was not used for the stated purpose in accordance with the *Act*.

In addition, the tenants are also seeking double the return of their security deposit. The tenants stated that the landlords continue to hold their \$1,500.00 security deposit, even though they provided their written forwarding address on the outgoing condition inspection report. The last page of the outgoing condition inspection was submitted in evidence and supports that both the landlords and the tenants provided their forwarding addresses for service on that document. The tenants stated that they have not been served with any application from the landlords claiming towards their security deposit and that the tenants did not agree in writing to surrender any amount of their security deposit to the landlords.

Finally, the tenants are also seeking the return of \$63.00 in overpaid utilities that the tenants stated was a signed agreement between the parties, in which the landlords agreed to repay the tenants \$63.00. The document is dated May 11, 2019, and is signed by both the landlords and tenants on May 16, 2019.

Analysis

Based on the undisputed documentary evidence of the tenants and the undisputed testimony of the tenants provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the *Act* applies and states:

Tenant's compensation: section 49 notice

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.

[Emphasis added]

Based on the undisputed evidence before me, I find the tenants have met the burden of proof and are entitled to **\$36,000.00** in compensation from the landlords, comprised of twelve times the monthly rent of \$3,000.00 pursuant to section 51(2) of the *Act*. I find the testimony, sale listing, and notices submitted in evidence support that the property was listed for sale versus being occupied by the landlords or landlords' spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse. I find the landlords issued the 2 Month Notice in bad faith.

I will now deal with the security deposit. I find the undisputed evidence before me supports that the landlords were served with the tenants' written forwarding address as of May 31, 2019, which was provided on the outgoing condition inspection report. Therefore, section 38 of the *Act* applies and states in part:

Return of security deposit and pet damage deposit

38 (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.

[Emphasis added]

Based on the above and the undisputed evidence before me, I find the landlord breached section 38(1) of the *Act* by failing to either return the tenants' full \$1,500.00 security deposit to the tenants by June 15, 2019, which is 15 days after the written forwarding address was provided, or apply to claim against the security deposit. Therefore, I find the tenants have met the burden of proof and I grant the tenants **\$3,000.00** for double the return of the \$1,500.00 security deposit.

Regarding the \$63.00 amount claimed for overpaid utilities, I find the parties had a signed agreement, which is enforceable under the *Act*. Therefore, I find the tenants met the burden of proof and I grant the tenants **\$63.00** for overpaid utilities, which was undisputed.

As the tenants' application was successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

I have also considered Residential Tenancy Branch Policy Guideline 27 ("RTB Policy Guideline 27"), which states in part:

If the claim is for compensation under section 51(2) or 51.3 of the RTA, or section 44(2) or 44.1 of the MHPTA, the director will accept jurisdiction if the claim is for an amount over the small claims limit. **These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount,** and mitigation is not a consideration. They are not usually complex.

[Emphasis added]

Based on the above, and while the normal limit for a monetary claim is \$35,000.00, I accept jurisdiction over this claim, which exceeds \$35,000.00, in accordance with section 51(2) of the *Act* and RTB Policy Guideline 27.

I find the tenants have established a total monetary claim of **\$39,163.00** comprised of \$3,000.00 for the double security deposit, \$63.00 for the overpaid utilities, \$100.00 for the filing fee, and \$36,000.00 for twelve times the monthly rent for the landlords failing to comply with the reason stated on the 2 Month Notice.

Conclusion

The tenants' application is fully successful.

The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$39,163.00 as indicated above. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlords.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 9, 2019

Residential Tenancy Branch