



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on October 1, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of double the security deposit
- A monetary order for 12 months compensation pursuant to section 51 of the Act.

The Tenant attended the hearing. However, the Landlord did not. The Tenant stated that he served the Notice of Hearing and his application package to the Landlord by registered mail on June 24, 2019. Tracking information was provided and it was shown that the package was delivered to the Landlord on June 29, 2019. I find the Landlord received the package on the same day it was delivered to the address the Landlord had listed as their contact address on the Tenancy Agreement.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. 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 compensation pursuant to section 51 the Act?

- Is the Tenant entitled to compensation in the amount of double his security deposit, pursuant to section 38 of the Act?

Background and Evidence

The Tenant stated that monthly rent was \$1,650.00 per month and that the Landlord still holds his security deposit in the amount of \$675.00.

The Tenant is seeking two items. The first item is 12 months compensation because the Landlord asked him to move out so that his daughter could move in, but they turned around and re-rented the unit after for more money. The Tenant stated that he never got any formal Notice to End Tenancy, and only received a text message from the Landlord stating they wanted to end the tenancy so that family members could move in. The Tenant stated that he accepted this text message and moved out of the rental unit by July 1, 2018. The Tenant stated that the Landlord renovated the unit and re-rented it for more after a period of time.

The second item the Tenant is seeking is double his security deposit. The Tenant stated that he moved out on July 1, 2018, and sent a text message to the Landlord on July 11, 2018, providing his forwarding address. The Tenant stated that he never heard any response from the Landlord and never got any money back. The Tenant stated that he went back to the rental unit on July 15, 22, and 29th of 2018 and posted a written letter to the front door asking for the security deposit to be returned to him. The Tenant stated that again, he heard nothing from the Landlord, and received no money back. The Tenant waited almost a year to file this application because he had hoped the Landlord would return his money.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant is seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$1,650.00) because the new owners did not utilize the unit as it was initially explained to him prior to moving out.

After reviewing this application, I find the Tenant is ineligible for the amount he is seeking. In making this determination, I considered and take note of the fact that the Landlord did not issue a valid and proper 2-Month Notice to End Tenancy for Landlord's

use of the property. It appears the Landlord initiated the tenancy ending, but this was only done informally and through text message. I turn to the following portion of the Act:

Landlord's notice: landlord's use of property

49 (3) 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.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Next, I turn to the following portion of the Act:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed the evidence before me, and I find the Landlord never issued a valid 2-Month Notice to End Tenancy, and the Tenant was not legally required to vacate the rental unit, based on the informal communications he had with the Landlord. The Tenant could have stayed in the rental unit until a valid notice was issued. However, he chose to move out. A valid 2-Month Notice must be issued in order for compensation under section 51 to be due. Given this, I find the Tenant is not entitled to any compensation under section 51 of the Act.

With respect to the second portion of the Tenant's application, I note the following:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I find the Tenant has not provided their forwarding address in writing to the Landlord. I am not satisfied that sending a text message to the Landlord is sufficient, particularly in the absence of information showing it was received (such as a response). There does not appear to be sufficient evidence to show the Landlord received that particular text message.

Further, I note the Tenancy Agreement lists the Landlord's address and contact information. However, the Tenant never sent or delivered his forwarding address in writing to that address. Rather, the Tenant appears to have left it at the front door of the rental unit which he had moved out of. It is not sufficiently clear who was living at the house at that time, and whether the Landlord was residing there at the time. Ultimately, I find the evidence before me does not sufficiently demonstrate that the Tenant served the Landlord with his forwarding address in writing for the return of his security deposit.

Since the forwarding address was not properly provided from the Tenants to the Landlord, in writing and in a verifiable manner, I dismiss the Tenant's application on this matter. I note the following portion of the Act:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Since the tenancy ended on July 1, 2018, the Tenant has now missed the window of time available to serve the Landlord with his forwarding address in writing. The Tenant contributed to missing this window by failing to file his application in a timely manner. Had the Tenant applied shortly after not getting his deposit back in 2018, he could have made attempts to re-serve the Landlord with his forwarding address in writing within the one year window, at the address listed as the address for service on the Tenancy Agreement. Since the Tenant missed the window of time to provide his forwarding address in writing, I dismiss this application without leave to reapply.

As the Tenant was unsuccessful with his application, I decline to grant him the recovery of the filing fee.

Conclusion

The Tenant's application is dismissed, in full, without leave to reapply.

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: October 01, 2019

Residential Tenancy Branch