



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call.

The landlord did not attend this hearing, although I waited until 2:15 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant's agent testified that on July 14, 2019, she sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail receipt and tracking number was provided in support of service. The package was sent to the landlord's address for service as per the tenancy agreement and a Two Month Notice to End Tenancy ("Two Month Notice") issued by the landlord. The tenant testified that the Two Month Notice was issued on the grounds that the landlord's daughter was to occupy the rental unit; therefore, the address for service for the landlord herself would not have changed.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to a monetary order for compensation for loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on February 1, 2011. The tenant paid a security deposit of \$550.00 at the start of the tenancy which the landlord continues to hold. The rental unit was the main level of a three-level house. The tenant occupied the main level. The ground level was occupied by another tenant. The top floor contained five bedrooms which were individually rented out to other tenants by the landlord.

On September 23, 2018, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of November 30, 2018. The notice was issued on the ground that the landlord intended to occupy the rental unit. The tenant testified that in a previous hearing the landlord had argued it was the landlord's daughter and her family that intended to occupy the rental unit.

The landlord was granted an order of possession in the previous dispute and the tenant vacated the rental unit on November 15, 2018.

The monthly rent prior to the end of the tenancy was \$1100.00.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenant's forwarding address in writing. The tenant provided a copy of an undated text message sent to the landlord's son as proof of service of a forwarding address.

The tenants is claiming an amount equivalent to twelve times the monthly rent as compensation for the landlord not using the rental property for his own use after issuing the Two Month Notice.

In support of their claim the tenant's agent J.J. submits as follows:

- She hired a Private Investigator ("PI") who confirmed nobody is residing in the rental unit.
- The PI attended to the unit on April 21, 2019.
- The PI knocked on the door and there was no response.
- The PI knocked on the door to the ground level suite.
- An adult male answered the door and advised that he has been residing in the ground level suite for 5 years.
- The adult male confirmed that the tenant used to reside on the main floor and that nobody has moved in since the tenant vacated in November 2018.
- A copy of the PI's report was submitted as evidence on file.

The tenant called his witness G.J. who testified as follows:

- He lives next door to the rental property.
- He knows the owners of the property as they used to live there years ago.
- He knows the tenant has he resided on the main floor of the unit for 8 years.
- There does not appear to be anybody currently residing on the main floor unit which the tenant occupied.
- He has not seen anybody come and go from this unit for a very long time.
- There is usually only one car in the driveway which belongs to the tenant occupying the ground level suite.
- He has not seen the landlord's daughter at the property at all since the tenant vacated.

The tenant is also claiming loss of 8 years worth of monthly cable payments. The tenant claims this service was cut off by the landlord shortly after moving into the unit even though it was included with the rent. The tenant testified that he brought it up with the landlord at the time but it was brushed off. The tenant testified that he did not put any formal request in writing to the landlord in regards to the cable during the 8 year tenancy. The tenant testified he opened his own cable account.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the

landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Section 88 of the Act sets out how documents may be served. Text and/or e-mail message is not an acceptable method of service pursuant to section 88 of the Act. As the tenant provided a forwarding address by text message, the tenant has not provided the landlord with a forwarding address in writing as required under the Act. Further, this text was sent to the landlord's son, not the landlord. As such, I dismiss this portion of the tenant's application with leave to reapply.

Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Pursuant to section 51(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.

On a balance of probabilities and based upon the undisputed testimony of the tenant, the tenant's witness and the PI report, I find that the landlord or the landlord's daughter did not occupy the rental unit within a reasonable period after the tenant vacated the rental unit. The tenant put forth a plausible prima facie case that the landlord has not occupied the rental unit including the PI's report and an affirmed statement from a

witness. The landlord failed to attend this hearing or present any evidence in response to the tenant's claim and evidence.

I allow the tenants' claim and award an amount of \$13,200.00, which is twelve times the monthly rent of \$1100.00.

The tenant's claim for losses for the landlord allegedly not providing cable is dismissed without leave to reapply. The tenant provided no evidence of ever raising this issue in writing with the landlord over the 8 year period. The tenant provided no evidence to support the amount claimed. Lastly, I find the tenant failed to mitigate his losses by failing to take any action such as filing an application for dispute over this 8 year period.

As the tenant was for the most part successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$13,300.00.

Conclusion

The tenant's application is for return of the security deposit is dismissed with leave to reapply.

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$13,300.00. 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: October 18, 2019

Residential Tenancy Branch