



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of double the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant's evidence that the Landlord was served with the application for dispute resolution, notice of hearing and all evidence (the “Materials”) by registered mail on August 16, 2019 to both the Landlord's business address and residence in accordance with Section 89 of the Act. Postal evidence indicates that the Landlord received and signed for the mail on August 19, 2019. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under written agreement started on August 1, 2010 and ended on April 30, 2018. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. Rent of \$1,200.00 was payable on the first day of each month. In February 2018 the

Tenant was given a two month notice to end tenancy dated February 26, 2019 with an effective date of April 30, 2019 (the "Notice"). The reason stated on the Notice is that the Landlord sold the unit and the purchaser intends in good faith to occupy the unit.

The Tenant does not know whether rent was paid for the last month of the tenancy as all rents at the time were being collected by Revenue Canada. The Tenant claims \$1,200.00 for not being given the last month's rent free or for not having been compensated by the equivalent of one month's rent.

On April 30, 2018 the Tenant sent its forwarding address to the Landlord by registered mail. The Tenant did not agree in writing for the Landlord to retain the security deposit and the Landlord did not make an application to claim against the security deposit. The Landlord has not returned the security deposit. The Tenant claims return of double the security deposit.

The unit is an apartment within an apartment building. The unit was advertised for rent within 2 weeks of the Tenant's move out date of April 30, 2018. On September 10, 2018 the Tenant conducted a title search and that search result indicates that a new owner is listed as having applied for the title of the building on May 2, 2018. The Tenant does not know if the purchaser asked the Landlord in writing to end the tenancy for the reason stated on the Notice and no such letter was provided from the Landlord to either the Tenant or for this hearing. The Tenant claims compensation equivalent to two month's rent.

Analysis

Section 51(1) of the Act provides that 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. Given the Tenant's lack of evidence that rent was paid for the last month of the tenancy, I find that the Tenant has

not provided sufficient evidence that it was not compensated for the end of the tenancy. I therefore dismiss this claim.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Tenant provided its forwarding address and that the Landlord neither returned the security deposit or applied to retain the security deposit, I find that the Tenant has substantiated an entitlement to double the security deposit plus zero interest of **\$1,200.00**.

At the time the Notice was issued, Section 51(2) of the Act was in force and provided that if

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

(b) 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, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. As there is no evidence that the purchaser asked the Landlord to end the tenancy in order for the purchaser to occupy the unit, and given the undisputed evidence that the unit was sold and placed for rent, I find that the Tenant has substantiated that the Landlord did not take steps to accomplish or use the rental property for the stated reason on the Notice. The Tenant is therefore entitled to the compensation claimed of **\$2,400.00**. As the Tenant's application has met with substantial success, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total of **\$3,700.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,700.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: December 4, 2019

Residential Tenancy Branch