



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for monetary compensation and for the return of the security deposit.

The hearing was initially scheduled for September 27, 2019 and was adjourned due to service issues. This decision should be read in conjunction with the interim decision dated September 27, 2019.

All four Tenants were present for the initial hearing date and three Tenants were present on December 12, 2019. The Landlord was present for the December 12, 2019 hearing only. At the hearing on December 12, 2019, the Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenants confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service.

The Tenants submitted receipts dated November 2019, which was following the initial adjournment of the hearing. However, as stated in the interim decision dated September 27, 2019 the Tenants were not permitted to submit any additional evidence. Therefore, these receipts are not accepted as evidence and will not be considered in this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Are the Tenants entitled to monetary compensation?

Are the Tenants entitled to the return of the security deposit?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Tenants testified that the tenancy began in approximately 2011 and that they moved out on June 30, 2017. They initially were unsure of the monthly rent amount at the end of the tenancy but later confirmed it was \$1,697.00 as indicated on a notice of rent increase submitted into evidence by the Landlord. The Tenants testified that they paid \$800.00 for a security deposit and that they did not receive any amount from their deposit back. The Tenants filed the Application for Dispute Resolution on June 11, 2019.

The Landlord testified that the tenancy was already in place when he purchased the property in February 2016. He agreed that monthly rent was \$1,697.00 prior to a rent increase set to take effect in June 2017. The Landlord was unsure how much the Tenants paid for a security deposit but agreed that no amount had been returned due to damage to the rental unit caused by the Tenants.

The Tenants have applied for the return of their security deposit in the amount of \$800.00. They stated that they attempted to send the Landlord their forwarding address by mail to his address as noted on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") that they received, but that the mail was returned as the address was incorrect. The Tenants submitted into evidence photos of the returned envelope which states that it was returned due to 'no such address'. The envelope was sent in July 2017. The Tenants stated that as the Landlord had not provided them with any other contact information, they were unable to send their forwarding address again. Therefore, the Landlord did not receive their address until receipt of their hearing documents for the reconvened hearing once they were able to find a valid address for service.

The Tenants stated that they were not provided with the opportunity to participate in a move-out inspection and noted that they did not agree to any deductions from their security deposit.

The Landlord stated that he did not receive a forwarding address from the Tenants and did not receive a phone call from them despite them having his phone number. He testified that he obtained legal advice that he did not have to provide them with his actual address and therefore he provided a friend's address on the Two Month Notice.

The Landlord stated that a move-out inspection was not completed as the Tenants were swearing at him when he arrived at the rental unit and would not talk to him. Therefore, he stated that there were no agreements as to deductions from the security deposit. The Landlord

confirmed that he was unsure as to the amount of the security deposit but stated that he kept it due to damages in the rental unit.

The Tenants have also claimed \$6,710.29 which they stated includes moving expenses, two months of rent at each of their new rental units, the cost of renting a moving truck, garbage removal and storage costs. The Tenants stated that they are seeking rent and moving costs due to being evicted through the Two Month Notice for the Landlord to move into the rental unit when they do not believe that he did.

The Tenants submitted a copy of the Two Month Notice into evidence. The notice dated April 29, 2017 states the following as the reason for ending the tenancy:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The Tenants submitted the following receipts into evidence:

- April 25, 2018 storage for \$93.50
- April 25, 2018 storage for \$134.95
- June 30, 2017 truck rental for \$160.92
- July 1, 2017 truck rental for \$146.47
- July 1, 2017 vehicle use for moving and garbage removal for \$160.00
- Two months of room and board for two Tenants in the amount of \$750.00 per month each, for a total of \$3,000.00
- Two months of room and board for Tenant's children in the amount of \$750.00 per month each for a total of \$3,000.00.

The Tenants submitted a photo of a 'for rent' sign and stated that this was taken in front of the rental unit shortly after they moved out. They also submitted an email thread which they stated was with a neighbour of the rental unit. In one email the writer of the email writes that the place is being fixed up and that there is a for rent sign on the tree. In an email response dated July 11, 2017, the writer notes that they called the phone number on the sign and that the unit is being rented for \$2,500.00 per month. In an email dated August 5, 2017 the writer states that family members did not move into the rental unit as they saw other people at the rental unit.

The Tenants stated their position that the Landlord evicted them with the Two Month Notice as they had not agreed to a verbal rent increase request of \$300.00 per month. They stated that they believe that non-family members moved into the rental unit for significantly higher monthly rent and that the Landlord did not move into the unit.

The Tenants stated that they are seeking moving costs due to the illegal notice and as it was difficult for them to find a new place to live which led to many hardships for their family.

The Landlord stated that rent increases were completed legally and submitted a copy of a rent increase notice issued in March 2017 to increase the rent from \$1,697.00 to \$1,759.87 set to begin on June 2, 2017. He denied serving the Two Month Notice to seek a higher rent amount and stated that the rental unit was not re-rented following the end of the tenancy.

The Landlord also questioned the rent amounts claimed by the Tenants and noted that two of the people listed were not even on the tenancy agreement. The Landlord stated that he served the Two Month Notice as he intended to move into the rental unit. However, he testified that due to the damage in the rental unit he had to complete repairs for approximately four months. He stated that he intended to move into the rental unit when the repairs were completed by November 2017, but due to a family emergency in another country, was unable to move in at that time. However, he stated that he lived in the rental unit from February 2018 to April 2018 and then listed the house for sale.

The Landlord submitted an accepted offer on the home dated April 17, 2018. The Landlord also submitted a receipt from a disposal company dated July 17, 2017 in the amount of \$548.10 and a receipt for repairs dated July 13, 2017 and signed November 22, 2017 in the amount of \$12,915.00. The receipt for repairs indicates that repairs were completed due to damage in various areas throughout the rental unit.

The Landlord stated that the 'for rent' photo submitted by the Tenants is not clear and testified that he did not put up a sign or attempt to rent the unit. The Landlord questioned why the Tenants did not take photos to show people living in the rental unit if that had been what occurred.

The Tenants denied that there was any damage caused in the rental unit or any repairs that were needed at the end of the tenancy.

Analysis

Regarding the Tenants' claim for the return of the security deposit, I refer to Section 38(1) of the *Act* which states the following:

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.

The parties agreed that the tenancy ended on June 30, 2017. However, they were not in agreement as to whether the Tenants attempted to provide their forwarding address to the Landlord. In a photo of the returned envelope submitted by the Tenants, the date appears to be July 3, 2017.

Although the Landlord stated that he provided a friend's address as his service address on the Two Month Notice, the Tenants submitted the returned envelope regarding their forwarding address and testified that their initial hearing package was also returned as 'no such address' when sent to the same address.

Therefore, I find it likely that the Landlord did not provide a friend's address and instead provided an invalid address for service. Accordingly, I find that it would have been difficult for the Tenants to send a copy of their forwarding address to the Landlord. However, I accept that they attempted to do so on July 3, 2017 and that they sent it to the address provided by the Landlord. Therefore, I find that the Tenants made reasonable efforts to provide the Landlord with their forwarding address within a year of the tenancy ending and as such were in compliance with the *Act*.

Accordingly, I find that the Landlord is deemed served with the Tenants' forwarding address 5 days later, pursuant to the deeming provisions of Section 90 of the *Act*. I do not find it acceptable that a landlord may avoid their responsibilities regarding the security deposit due to providing an invalid address. Instead, I find it reasonable that the Tenants would serve the Landlord at the address provided on the Two Month Notice and I find that the Landlord was sufficiently service pursuant to Section 71 of the *Act*.

Therefore, I find that the Landlord had 15 days from July 8, 2017 to return the security deposit or file a claim against it. Despite the Landlord's testimony regarding significant damage in the rental unit, I have no evidence before me that he filed an Application for Dispute Resolution against the security deposit. Instead, I find that the Landlord did not return the deposit within 15 days and also did not file a claim against the deposit. A security deposit is held in trust for the tenants and may not be retained simply because a landlord feels entitled to do so.

As the Landlord was not in compliance with Section 38(1) of the *Act*, I find that the Tenants are entitled to double the deposit pursuant to Section 38(6) of the *Act* as follows:

- (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.

Although the Landlord was unsure as to the security deposit amount, I accept the testimony of the Tenants that the deposit was \$800.00. Based on the monthly rent amount at the end of the tenancy, I find that \$800.00 was likely half of the monthly rent at the start of the tenancy, given the amount of the allowable rent increases. Therefore, I award the Tenants \$1,600.00 for the return of double the security deposit.

Regarding the Tenant's claim for compensation based on the Two Month Notice, I refer to Section 51(2) of the *Act* which states the following:

- (2) In addition to the amount payable under subsection (1), if
 - (a) 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
 - (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 under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I also note that the above Section 51(2) is from the *Act* at the time the notice was served in 2017. This section was amended in May 2018 to provide for compensation equivalent to 12 months compensation. However, as the legislation provided two months compensation in 2017, this is what will be considered as per the Tenants' claim, based on the date of service of the Two Month Notice.

I also note that although the Tenants applied for two months compensation for their current monthly rent, that the *Act* provides for compensation based on the rent at the rental unit in question. Therefore, this is the amount that will be considered, along with the Tenants' request for costs associated with moving.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, the Tenants have the burden of proof in this matter.

The Tenants submitted a photo of a 'for rent' sign as well as emails from a neighbour regarding the rental unit being advertised for sale. However, this was disputed by the Landlord who stated that repairs were completed in the rental unit before he visited family in another country and moved into the rental unit in February 2018. The Landlord denied advertising the rental unit for rent or renting it to anyone else.

In this matter, I do not find the evidence submitted by the Tenants to be sufficient to establish that the Landlord did not take steps towards moving into the rental unit or that the Landlord re-rented the rental unit. The 'for rent' sign in the photos is difficult to see and does not contain any detailed information that would confirm that it was posted regarding the rental unit. I also do not find that the emails from the neighbour establish that they are regarding the rental unit due to insufficient information to connect the information in the emails to the actual rental unit and/or Landlord.

Therefore, due to insufficient evidence I am not satisfied that the Landlord evicted the Tenants through the Two Month Notice and then re-rented the unit. The Landlord testified that he completed repairs as opposed to renovations in the rental unit. As shown on the invoice for the repairs, the work completed is referenced regarding damage in the rental unit and not extensive renovations. Therefore, I find it possible that the Landlord may have needed to complete some repairs prior to moving into the rental unit.

However, I note that in this matter I found insufficient evidence from both parties to support their testimony regarding what happened with the rental unit following the end of the tenancy. As the Tenants have the burden of proof, I am not satisfied as to their claim that the Landlord did not occupy the rental unit and instead re-rented the unit.

As I do not find that the Tenants established that the Landlord or a close family member did not occupy the rental unit as stated as the purpose for ending the tenancy on the Two Month Notice, I decline to award two months compensation. I also decline to award the Tenants compensation for moving costs. Tenants who receive a Two Month Notice receive one month of compensation to account in part for the inconvenience of moving. I also note that moving costs are seldom awarded under the *Act* due to these costs being an inevitable expense that a tenant may face. This claim is dismissed, without leave to reapply.

Conclusion

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$1,600.00** for the return of double the security deposit. The Tenants are provided with this

Order in the above terms and the Landlord must be served with this Order as soon as possible. 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.

The remainder of the Tenants' application is dismissed, 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: December 13, 2019

Residential Tenancy Branch