



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the tenant on August 28, 2019, for a monetary order for money owed, for the return of double the security deposit and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and Procedural matters

The parties confirmed receipt of evidence from the other party. However, the tenant indicated they provided to the Residential Tenancy Branch and the landlord late rebuttal evidence totaling 132 pages.

However, the Residential Tenancy Branch (the “RTB”) only received 8 pages on December 19, 2019. I have confirmed with the RTB staff that there **was not** 132 pages received from the tenant.

Further, the evidence was late and not in compliance with the Residential Tenancy Branch Rules of Procedures. I find it unfair and prejudicial to the other party when the evidence is provided late and does not give the other party time to respond.

Therefore, I will only consider the tenant’s original evidence filed on August 28, 2019 and September 9, 2019. I accept the landlord evidence as it was served within the statutory time limit.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed?

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy began on September 2015. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant.

The tenant testified that they received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), issued on November 15, 2017, with an effective date of December 31, 2017. The reason stated in the Notice was:

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

The tenant stated they ended the tenancy early and vacated the rental unit on November 27, 2017.

Filed in evidence is a copy of the Notice and a copy of a 10 Day Notice to end tenancy early, dated November 17, 2017.

Compensation equal to one month rent

The tenant testified that they did not receive compensation equal to one month of rent when they vacated the rental unit. The tenant seeks to recover the cost of \$1,500.00.

The landlord testified they never issued the tenant the Notice and it was in the evidence that this is the first time they have seen the document. The landlord stated that although the person who signed the Notice was their spouse, there spouse had no authority to do so as they have no legal interest in the property.

The landlord testified that the tenant was in rent arrears for August, September, October, and November 2017. The landlord stated that they received the following rent payments.

- August 2017 \$877.00, September 2017 \$575.00, October 2017 \$575.00, and November 2017 \$643.00.

AS witness for landlord testified that the tenant gave them a punch of papers to sign and they were aware of signing a reference letter. However, they don't recall signing the Notice; however, it could have been in the papers they signed.

The tenant responded that there was a verbal agreement with the landlord that while the rental unit was being decommissioned, they would not have to pay any rent. The tenant stated that this was from July 23, 2017 to September 23, 2017.

The landlord argued that the tenant was told they did not have to pay for the last few days of July 2017; however, there was never any agreement that the tenant would be allowed to live rent free for two months. The landlord stated that the tenant had the use of the suite and they had access to their bathroom. Filed in evidence is an email that the landlord was not agreeable to the tenant living rent free.

The tenant argued that they assumed that they would live there free, as the decommission of the suite took longer than expected.

Compensation equal to two months of rent

The tenant testified that the landlord did not issue the notice to end tenancy in good faith as the landlord was attempting to get a rent increase prior to the tenancy ending that was over the legislative allowable amount.

The tenant testified that have no evidence to prove the rental unit was not used for the stated purpose in the Notice.

Double the security deposit

The tenant testified that they gave the landlord their forwarding address in writing on November 17, 2017, and it was left in the landlord's mailbox that was at the end of the driveway. The tenant stated it was written on the 10 Day Notice to End Tenancy Early. The tenant stated that the landlord did not contacted them to discuss the move-out or arrange for an inspection.

EW witness for the tenant testified that they were with the tenant when they placed the envelope in the mailbox. EW stated they took a picture the mailbox at the time.

The landlord testified that they did not receive the tenant's forwarding address on November 17, 2017, which was said to have been on the 10 Day Notice, which was not received.

The landlord testified that the mailbox at the end of the driveway was damaged in July 2017, as it was hit by a vehicle, and was not repaired until December 2017. The landlord stated, if there is a photograph, it was taken recently and altered. The landlord stated that they have a mailbox at the front of the house which is used for mail.

The tenant argued that the photograph is not altered. The tenant stated they have no idea if there is a mailbox at the front of the house.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Compensation equal to one month rent

In this case, I am satisfied that the tenant received the Notice. While the landlord was unaware of the Notice being issued, that is an issue between the landlord and their spouse. Their spouse should not be signing documents without reading them first.

However, I am not satisfied that the landlord and tenant had any agreement that the tenant could live rent free from July 23, 2017 to September 23, 2017. This does not have the "Ring of Truth" and the evidence of the tenant was that they assumed the agreement would be for the entire time. While the tenant may have been entitled to a rent reduction while the suite was being decommissioned. I do not accept the tenant was entitled to live rent free for two months.

In this case, rent for August, September, October, and November 2017 total the amount of \$6,000.00. The tenant paid the total amount of \$2,670.00, during this time frame leaving a balance of rent owed of \$3,330.00.

Even if I accept the tenant was entitled to the equivalent amount of \$1,500.00 for receiving the Notice, I find the tenant owed at least two months of rent to the landlord at the end of the tenancy. Therefore, I find the tenant has been compensated, as the tenant did not pay rent for November 2017. That still leaves a balance of rent owed of \$1,800.00. Therefore, I dismiss this portion of the tenant's claim.

Compensation equal to two months of rent

In this case, the evidence of the tenant was the Notice was not issued in good faith. However, good faith is only considered when the Notice is disputed by the tenant. The Arbitrator will consider the good faith requirement under the Act to determine whether the tenancy should continue or end.

However, the tenant did not dispute the Notice, and the only issue for me to determine is whether the landlord used the premises for the stated reason in the Notice.

The evidence of the tenant was that they have no evidence to prove it was not used for the stated purpose.

As the onus is on the tenant to prove their claim, I find without any evidence the tenant has not met that burden. Therefore, I dismiss this portion of the tenant's claim.

Double the security deposit

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,

In this case, the evidence of the tenant and the tenant's witness was that on November 17, 2017, they placed their forwarding address in the landlord's mailbox that was along the road. The evidence of the landlord was they never received any 10 Day Notice to End Tenancy containing the tenant's forwarding address and the mailbox along the road was damaged at that time.

While I accept that placing a document, such as this, in a mailbox, is an approved method of service under the Act. However, the deemed service provisions of the Act, are rebuttal and are only accepted when there is no evidence to the contrary.

In this case, the landlord denied it was ever received. This is supported by the tenant's evidence that they never heard from the landlord about the move-out date or inspection after it was placed in the mailbox. The tenant could have contacted the landlord by telephone to confirmed it was received.

As the requirements of the Act state the landlord must return the security deposit within 15 days after the landlord received the tenant's forwarding address, I find I am not satisfied that the tenant has met the burden of proof to prove it was received, such as by sending it registered mail, and obtaining the signature of the landlord.

Based on the above, I am not satisfied that the tenant has met the requirement of section 38(1)(b) of the Act. In normal circumstance, I would grant leave to the tenant to reapply.

However, as the tenant delay filing their application to the last possible time, and the tenant must prove the landlord received their forwarding address within 12 months of the tenancy ending, and as the two year statutory time limit has also expired. I find any

future application would be barred from being heard. Therefore, I dismiss this portion of the tenant's claim without leave to reapply.

Conclusion

The tenant's 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: January 16, 2020

Residential Tenancy Branch