



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for a monetary order for money owed or compensation under the Act, for return of her security deposit, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence prior to the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence of the parties was that this tenancy began on February 1, 2015, for a monthly rent of \$1,200.00, and a security deposit of \$600.00 being paid by

the tenant to the landlord. The undisputed evidence is that the monthly rent at the end of the tenancy was \$1,300.00.

The tenant submitted without dispute that she moved out of the rental unit on May 2, 2019. The parties agreed that the landlord has not returned the tenant's security deposit.

The tenant's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Return of security deposit	\$600.00
2. 12 months' compensation (2 Month Notice)	\$15,600.00
TOTAL	\$16,200.00

The tenant's relevant evidence included, but is not limited to, a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property, proof of a real estate listing showing the rental unit was for sale, text messages between the parties, proof of monthly rent paid, and proof the tenant sent the landlord her written forwarding address by registered mail.

Security Deposit-

The tenant said that the landlord was provided with her written forwarding address, first by text message, and then on June 24, 2019, in a letter sent by registered mail. The tenant submitted a copy of the letter to the landlord containing the written forwarding address and copies of proof of mailing.

The tenant stated that the landlord has not returned her security deposit.

In response to my inquiry, the tenant said there was not a move-in or move-out inspection of the rental unit and there were no move-in or move-out condition inspection reports (CIR).

Landlord's response-

The landlord submitted that he thought it was fair to keep the tenant's security deposit as he paid approximately \$1,000.00 for vinyl siding costs. The landlord submitted a copy of an invoice

In response to my inquiry, the landlord confirmed there was not a move-in or move-out inspection of the rental unit and or move-in or move-out CIR's.

12 months' compensation (2 Month Notice)-

In support of this claim, the tenant submitted that she received a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) from the landlord on or about February 28, 2019, which listed an end of tenancy date of May 5, 2019. The tenant submitted a copy of the Notice, which was signed by the landlord, and as a reason for ending the tenancy, listed that the rental unit will be occupied by the landlord or a close family member of the landlord.

The tenant submitted further that she chose to accept that the tenancy was ending and vacated the rental unit on May 2, 2019.

The tenant submitted that the landlord has not used and is not using the rental unit for the stated purpose as she noticed on June 24, 2019, the rental unit was listed for sale.

As background, the tenant submitted that she agreed to a monthly rent increase from \$1,200.00 to \$1,300.00 during the tenancy, approximately 2 years prior to the end. The tenant acknowledged that this increase was over the amount allowed by the RTB, as to a yearly increase.

The tenant said that when she refused a further increase of \$150.00 requested by the landlord, she informed him she preferred to go with the allowable increase of 2.5% for 2019. The tenant submitted a copy of a text message to the landlord dated February 6, 2019, showing that the monthly rent increase could only be in the amount of \$32.50.

Shortly thereafter, the landlord issued her the Notice.

The tenant submitted that the landlord told her that he may have to sell the rental unit.

The text message response of the landlord, also February 6, 2019, said, in part, that he had hoped that acting in good faith the last two years in not increasing the monthly rent meant that she would be able to accept why he needed an increase more than the yearly amount allowed.

This text message of the landlord further states that the reality of his financial situation was that he could not afford to keep renting for \$1,300.00 a month. "I would have to sell the unit instead, in which I cannot guarantee a new owner would want to keep renting to you. Again not trying to be difficult but I have to be honest about my financial situation".

The tenant also said the landlord asked her to meet with his realtor, which she agreed to do. At this meeting, it was mentioned that renovations would need to be done in order to increase the monthly rent.

The tenant submitted text messages of February 26, 2019, where the landlord asked to meet with the tenant along with the landlord's realtor.

The landlord writes in this text message to the tenant, saying the meeting would not take long. Additionally, the landlord writes, "It's about the sale of the property and I'd like to give you some details".

The tenant submitted that she is entitled to compensation equivalent to 12 months' rent of \$1,300.00 per month, in the amount of \$15,600.00, as the landlord has not used the rental unit for the stated purpose listed on the Notice.

Landlord's response-

The landlord said that his original plan included multiple options, including selling, re-renting, or moving into the rental unit.

After a discussion with his wife, according to the landlord, they decided to move from their one-bedroom condo in the same building and move into the two-bedroom rental unit. The landlord's mother would then move into their one-bedroom condo, the landlord said.

In his written statement, the landlord wrote that as he reviewed the costs of the rental property in light of strata fees, expected increases to property taxes and insurance premiums and potential costs of repairs from wear and tear, he found the monthly rent of \$1,300.00 was not enough to cover base costs of operation.

The landlord wrote that he had family discussions with his mother, brother and realtor on how best to proceed.

The landlord wrote that ultimately, they decided that they would first try to increase the rent, but the tenant had not agreed to a rent increase over the allowed amount.

The landlord wrote that the next option was to sell the rental unit; however, the market prices had decreased, and they could not expect a favourable sale.

It was at this time, according to the landlord, that his mother became interested in moving into the building, so they made the decision that the landlord's mother would move into his one-bedroom condo in the same building, while he and his wife would move into the two-bedroom rental unit.

During March 2019, the landlord's grandmother became ill and was taken to hospital in another country, with the landlord's mother going over to look after her recovery. This was decided in May after the tenant had already vacated.

The landlord wrote that he was not confident renting the property for rent again was either economical or demonstrated good faith.

After discussions with his realtor, they decided to list the property for sale, but in a further show of good faith, the sale would stipulate a completion after December 15, 2019.

The landlord wrote that the change in circumstances with his grandmother caused them to change directions in moving into the rental unit.

The landlord agreed that the rental unit went on the market for sale on June 24, 2019, but testified that he took it off the market after advice from his realtor. The landlord testified that it was "smart" to keep the rental unit off the market "during this dispute".

In response to my inquiry as to the landlord's plans for the rental unit after this dispute is over, the landlord testified that he thinks his best option is to sell it as is.

The landlord said that his mother is still living in another country and said that the tenant was a good tenant. The landlord said further, however, that the costs to operate the rental unit were extraordinary and that selling was the only reasonable option.

The landlord's relevant evidence included a written statement, the real estate listing, copies of emails between the landlord and his mother, a copy of his mortgage statement, a copy of strata fees, the property tax bill, an estimate of \$40,000.00 to make renovations to the rental unit, a payment for vinyl siding replacement, a printout of what looks to be an MLS realtor statement of listing details, and a scan of flight times for the landlord's mother.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Security Deposit-

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the deposits within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit and pet damage deposit, pursuant to section 38(6) of the Act.

I do not find the tenant's right to a return of her security deposit has been extinguished in this case as the evidence shows it was the landlord who failed to conduct a move-in inspection and to provide a report, as is required of landlords under the Act.

In the case before me, the undisputed evidence shows that the tenancy ended on May 2, 2019, when the tenant vacated the rental unit.

I accept the undisputed evidence of the tenant, confirmed by the landlord, that she provided her written forwarding address in a letter sent by registered mail on June 24, 2019. The Act deems that the letter was served five days later, or in this case, by June 29, 2019.

I find that the landlord received the tenant's forwarding address by June 29, 2019, and had 15 days from that date, or July 14, 2019, to file an application for dispute resolution claiming against the security deposit or return the security deposit in full.

The landlord confirmed doing neither.

I therefore find the tenant is entitled to her security deposit of \$600.00 and that, according to the Act, this amount must be doubled. I therefore grant the tenant a monetary award of \$1,200.00, comprised of her tenant security deposit of \$600.00, doubled to \$1,200.00.

12 months' compensation (2 Month Notice)-

In the case before me, the undisputed evidence shows that the landlord issued the tenant a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, and in this case, the landlord listed that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

Section 51(2) provides that if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or if the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement. (emphasis added).

I accept the tenant's undisputed evidence, along with the landlord's confirmation, that the landlord listed the rental unit for sale the next month after the tenant vacated, less than two months after the tenancy ended and that his mother has not moved in.

I therefore find that the rental unit was not being used for the stated purpose on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in this case, May 5, 2019.

The rental unit stayed on the market until the landlord received the tenant's application for monetary compensation in response to the landlord's Notice. His clear intention is to put the rental unit back on the market after the dispute resolution is over, as he said so at the hearing.

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

In this case, while the landlord did not specifically claim that extenuating circumstances prevented him from using the rental unit for the stated purpose, I infer his responsive evidence amounted to this argument.

Residential Tenancy Policy Guideline 50 provides examples of extenuating circumstances, such as when a landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.

In this case, the landlord claimed it was his mother who intended to move into the rental unit and the landlord said she is still living in another country, which I find does not constitute extenuating circumstances which prevented him from using the rental unit for the stated purpose, by Policy Guideline 50.

I therefore find on a balance of probabilities that the landlord has provided insufficient evidence that extenuating circumstances prevented him from using the rental unit for the stated purpose.

I find the landlord's evidence shows clearly and consistently that the costs of renting the rental unit at the agreed upon price was the motivating force behind the Notice being issued to the tenant.

I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent.

I find merit with the tenant's application and award her recovery of her filing fee of \$100.00, pursuant to section 72(1) of the Act.

As a result, I grant the tenant a monetary award of \$16,900.00, comprised of her security deposit of \$600.00, doubled to \$1,200.00, the equivalent of monthly rent of \$1,300.00 for 12 months, or \$15,600.00, and the cost of the filing fee of \$100.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$16,900.00.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation for the return of her security deposit of \$600.00, which I have doubled, the equivalent of 12 months' rent of \$15,600.00 and recovery of the filing fee is granted. She has been granted a monetary order for \$16,900.00.

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 22, 2020

Residential Tenancy Branch