



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FFT

Introduction

On November 25, 2019, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and for the return of the security deposit.

The matter was scheduled as a teleconference hearing. The Landlord’s brother in law (“the Landlord”) attended as the Landlord’s agent. The Tenant / applicant also attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to compensation for money owed or damage or loss?

Background and Evidence

The parties testified that the tenancy began in July 2019 on a month to month basis. Rent in the amount of \$1,000.00 was due to be paid to the Landlord by the ninth day of each month. The Tenant paid a security deposit of \$500.00 to the Landlord.

The Tenant testified that they moved out of the rental unit on September 13, 2019 after receiving a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 12, 2019.

The rental unit is a self-contained unit/ suite within a larger residential home.

Compensation \$12,000.00

The Tenant testified that the Landlord gave him the Two Month Notice and told him he was going to live in the rental unit.

The reason for ending the tenancy within the Two Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member spouse or a close family member.

The Tenant testified that in late October 2019, he discovered that the Landlord had advertised the entire rental property, including the self-contained suite, as being for rent for \$6,000.00 per month. The Tenant provided a copy of the advertisement.

The Tenant submits that the Landlord issued the Two Month Notice in bad faith because the Landlord did not move into the rental unit and use the rental unit for himself.

The Tenant is seeking compensation of \$12,000.00 which is twelve months of rent payable under the tenancy agreement.

In reply, the owners brother in-law provided affirmed testimony confirming that he has been living in the rental suite since September 2019. He testified that he pays monthly rent of \$1,000.00. He testified that he is married to the owners sister who was living with him at the suite until March 2020.

In response to the advertisement of the rental property, the Landlord testified that it was a realtor who advertised the unit and the advertisement was supposed to be advertised for the remainder of the house, not including the suite.

Security Deposit

The Tenant is seeking the return of double the security deposit for the amount of \$1,000.00.

The Tenant testified that he provided his forwarding address to the Landlord on November 5, 2019. He testified that he attended the Landlord's property and left it inside the open front door. When the Tenant was asked if he notified anyone that he was on the property and was leaving his forwarding address he replied "no".

The Tenant testified that there was no written agreement between the parties where the Landlord was permitted to keep any amount of the security deposit. The Tenant testified that the Landlord did not return any amount of his security deposit.

In reply, the Landlord testified that the owner informed him that he had contacted the Tenant in September 2019 and told him to come collect his security deposit. The Landlord stated that the owner did not know how to return the deposit using e-transfer. The Landlord testified that the Landlord did not receive the Tenant's forwarding address on November 5, 2019.

In reply, the Tenant provided testimony confirming that the Landlord had asked him to come collect his security deposit, but the Tenant did believe him and did not attempt to collect it. He testified that he had provided his email address for the Landlord to return it using e-transfer.

Light Reimbursement \$100.00

The Tenant testified that the Landlord owes him \$100.00 for replacement of a light.

The Landlord replied that the Landlord is in agreement to pay the \$100.00 for the replacement.

Analysis

Section 49(3) of the act provides that a Landlord who is an individual may end a tenancy in respect of a rental unit if the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 49 of the Act provides that the definition of "close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

Section 51 (2) of the Act provides:

Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) 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

(b) 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. [my emphasis]

(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.

With respect to extenuating circumstances, the Guideline provides the following:

Extenuating Circumstances

An arbitrator may excuse a Landlord from paying compensation if there were extenuating circumstances that stopped the Landlord from accomplishing the purpose or using the rental unit.

The Guideline provides circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that the following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.

- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

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

Compensation under Section 51 of the Act

I find that the Landlord served a Two Month Notice to the Tenant under section 49(3) of the Act. The Tenant accepted the Two Month Notice and moved out of the rental unit.

I find the Landlord failed to use the rental property for the reason stated within the Two Month Notice for a six-month duration. I find that the property owners brother in law, and the owner's sister do not meet the definition of a close family member under section 49 of the Act.

I find that the Tenant moved out of the rental unit on September 13, 2019, and the Landlord's brother in law moved into the rental unit later that month and paid monthly rent to the owner.

I find that the rental unit was not used for that stated purpose in the Two Month Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered section 51(3) of the Act and have considered the Guideline regarding compensation and extenuating circumstances. I find that there is insufficient evidence from the Landlord to support that there are extenuating circumstances making it unjust for the Landlord to have to pay compensation.

I find that the Landlord owes the Tenant \$12,000.00 which is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Security Deposit

Section 38 (1) of the Act provides that within 15 days of the tenancy ending and the date the Landlord receives a forwarding address in writing, the Landlord must repay any security deposit or make an application for dispute resolution to claim against it.

I find that the Tenant did not provide the Landlord with his forwarding address on November 5, 2019. I find that it is not reasonable to find that the Landlord was served with the Tenants forwarding address when the tenant simply left it inside the door and did not notify anyone of its existence. I find that the method of service does not comply with the service provisions of section 89 and 90 of the Act.

Since I find that the Tenant never provided the Landlord with a forwarding address in writing the Landlord was not obligated to return it within 15 days. The security deposit does not double as a penalty for failure to comply with section 38 of the Act.

Since the Landlord is in agreement to return the deposit, I find that the Tenant is entitled to the return of the \$500.00 security deposit.

Light Reimbursement \$100.00

The Landlord agreed to reimburse the Tenant the amount of \$100.00 for the cost of a light.

I grant the Tenant the amount of \$100.00.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was mostly successful with his claims. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$12,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord did not use the rental unit for the purpose stated within the Two Month Notice for a six month duration. The Landlord must pay the Tenant the amount of 12 months' rent payable under the tenancy agreement.

The Tenant is entitled to the return of the \$500.00 security deposit and \$100.00 for the cost of a light.

The Tenant is granted a monetary order in the amount of \$12,700.00.

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: May 6, 2020

Residential Tenancy Branch