



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"). The Tenants applied for the return of their security deposit, for a monetary order compensation pursuant to section 51 of the *Act*, and to recover their filing fee. The matter was set for a conference call.

Two of the Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenants and the Landlord testified that they received each other's documentary evidence that I have before me.

I have reviewed all evidence and testimony 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

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to monetary compensation for damages under the *Act*?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on April 15, 2019, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the initial fixed term. Rent in the amount of \$3,600.00 was to be paid by the first day of each month, and that the Tenants had paid the Landlord a \$1,800.00 security deposit and a \$1,800.00 pet damage deposit (the deposits) at the outset of this tenancy. It was also agreed that the tenancy ended as of April 30, 2020.

Both parties agreed that the Landlord returned \$1,600.00 of the deposits for this tenancy to the Tenants on May 7, 2020 and that the Tenants had not provided the Landlord with written permission to keep a portion of their deposits.

The Tenants testified that they provided the Landlord with their forwarding address by sending the Landlord the Residential Tenancy Branches forwarding address form on June 5, 2020, by registered mail.

The Landlord testified that they had not returned the full deposits to the Tenant, within the required timeline, due to an outstanding repair bill due at the end of this tenancy. The Landlord testified that they have filed for a hearing to claim against the deposits for this tenancy on August 19, 2020.

The Tenants testified that they are also claiming for compensation due to the Landlord not providing them with proper notice to end their tenancy. The Tenants testified that the Landlord had advised them they were selling the property and that they would not be renewing their tenancy due to the sale. The Tenants testified that they did not know that a two-month notice should have been issued and that they moved out on the Landlord email request to end the tenancy. The Tenants testified that they are seeking the one month's rent compensation they are due as the Landlord ended their tenancy for the sale of the property and that they are requesting 12 months' rent in compensation due to the landlord not issuing the required written notice.

The Landlord testified that they had emailed the Tenants in February 2020, to advise them that they were putting the rental property up for sale and to arrange a showing schedule. The Landlord testified that the Tenants had stated that they were uncomfortable with showing while they still lived there and that a mutual agreement was reached that the Tenants would move out of the rental unit at the end of the fixed term and that the Landlord would wait until they were out before they listed the property for sale.

Both parties agreed that no written notice was issued to end this tenancy by either party.

Analysis

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

As for the first portion of the Tenants' claim, section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

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,

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.

I accept the agreed-upon testimony of these parties, and find that this tenancy ended on April 30, 2020, and that the Landlord was provided with the Tenants' forward address by registered mail, sent on June 5, 2020. Pursuant to the deeming provisions set out in section 90 of the *Act*, I find that the Landlord was deemed to have received the Tenants' forwarding address, five days after it was mailed, as of June 10, 2020.

Accordingly, the Landlord had until June 25, 2020, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, waited until August 19, 2020, to submit their application to claim against the deposits for this tenancy, 55 days past the statutory timeline.

At no time does a landlord have the right to simply keep the security deposit, or delay their application to claim against the deposits because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenants' deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (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.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenants have successfully proven their entitlement to the return of double their deposits. Accordingly, I award the Tenants the recovery of double the value of the original deposits, in the amount of \$7,200.00.

The Tenants have also claimed for compensation pursuant to section 51 of the *Act*; the *Act* states that a tenant who received a notice to end tenancy under section 49 of the act is entitled to the equivalent of one month's rent as compensation. Section 49 of the *Act* states the following:

Tenant's compensation: section 49 notice

51 (1) *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.*

In order to confirm if the Tenants are entitled to compensation under section 51 of the *Act*, I must first determine if the Landlord issued a notice pursuant to section 49 of the *Act*. Section 49(7) of the *Act* states that a notice issued under this section must comply with the “form and content of a notice to end tenancy” as set out in section 52 of the *Act*, which states the following:

Form and content of notice to end tenancy

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

Section 52(e) of the *Act* requires that a notice issued by a landlord to end a tenancy must be on the approved form. In this case, that approved form would need to have been the Residential Tenancy Branch form #RTB-32 Two Month Notice to End Tenancy for Landlord's Use of Property.

I accept the testimony of the Tenants that no written Notice had been issued by the Landlord to the end this tenancy. As the Landlord did not issue form #RTB-32 Two Month Notice to End Tenancy for Landlord's Use of Property, I find that the Landlord had not issued a legal notice to end this tenancy pursuant to section 49 of the *Act*. Consequently, as the Landlord had not issued a legal notice to end the tenancy pursuant to section 49 of the *Act*, I find that no compensation is due to the Tenants pursuant to section 51 of the *Act*. Therefore, I must dismiss the Tenants' claim for compensation pursuant to section 51 of the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been partially successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

I grant a monetary order to the Tenants in the amount of \$5,700.00, consisting of \$7,200.00 in the double value for the deposits, \$100.00 in the recovery of the filing fee, less the \$1,600.00 in deposits that the parties agreed had already been returned for this tenancy.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit and pet damage deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$5,700.00**. 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.

I dismiss the Tenants' application for a monetary order for compensation pursuant to section 51 of the *Act* 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: November 12, 2020

Residential Tenancy Branch