



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNSD, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for return of the security deposit; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The landlord advised that she has not provided the tenant with any evidentiary material, but uploaded 14 pages to the Residential Tenancy Branch dispute resolution system, as required, and did not know that she had to provide copies to the tenant. Further, the landlord has additional evidence but was not able to upload it.

Where a party relies on evidentiary material, the party must provide it to the other party, and a respondent is required to provide it at least 7 days prior to the hearing. Since the landlord has not provided any evidence to the tenant, I decline to consider it.

The tenant advised that all evidence of the tenant has been provided to the landlord. The landlord did not dispute that, and all evidence of the tenant has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and more specifically for the landlord's failure to use the rental unit

for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on February 1, 2018 and expired on February 1, 2019, thereafter reverting to a month-to-month tenancy which ultimately ended on August 30, 2020. Rent in the amount of \$1,850.00 was originally payable on the 1st day of each month, which was verbally increased to \$1,896.00 per month after the first year, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$925.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a low-rise complex, and a copy of the tenancy agreement has been provided as evidence for this hearing. No move-in or move-out condition inspection reports were completed.

The tenant further testified that on July 2, 2020 the parties had a discussion about ending the tenancy, and the landlord asked the tenant to sign a Mutual Agreement to End Tenancy. The tenant asked for a Two Month Notice to End Tenancy for Landlord's Use of Property so that the tenant would be entitled to compensation of one month's rent, which was honored by the landlord; the tenant did not pay rent for the last month of the tenancy.

On July 4, 2020 the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property by email, and a copy of the first 2 pages of the 4-page notice has been provided for this hearing. It is dated July 2, 2020 and contains an effective date of vacancy of August 31, 2020. The reason for issuing it states: "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). It also states that the close family member who will occupy the unit are: The landlord or the landlord's spouse.

The tenant asked the landlord to change the effective date of vacancy to give the tenant the maximum amount of time to move out, and the landlord served another Two Month Notice to End Tenancy for Landlord's Use of Property by email, which was identical to the first, but the effective date of vacancy was changed in hand-writing to September 2, 2020.

On August 30, 2020 the landlord and the tenant met and the landlord had some paper, so the tenant wrote her forwarding address on the paper and gave it to the landlord, asking the landlord to return the security deposit. The landlord wanted to keep the

deposit saying there was damage and some uncleanliness and wanted the tenant to pay more. The tenant replied that she preferred to go through the Residential Tenancy Branch. A friend was with the tenant at that time, helping to clean at the end of the tenancy, and observed the tenant give the landlord the tenant's forwarding address. The tenant followed up by sending a text message to the landlord reiterating the forwarding address. The landlord has not returned any portion of the security deposit and has not served the tenant with an Application for Dispute Resolution claiming against the security deposit.

The tenant also testified that she found various websites that had the rental home advertised for sale, and copies of the advertisements have been provided as evidence for this hearing. The tenant does not believe the landlord lives there, but has sold the rental property. The tenant has a friend who is a realtor and told the tenant that it sold for \$576,000.00 on October 27, 2020.

The landlord testified that at the beginning of the tenancy, the landlord told the tenant that the home would be listed for sale, and if the tenant wanted to purchase it, she would be given that option.

There were 2 tenants at the beginning of the tenancy and one moved out last year. The tenant should have moved out as well, but stayed, then moved out later.

The landlord further testified that the landlord did not ask the tenant to agree in writing about keeping the security deposit, but the tenant was a good tenant, and the landlord felt that her verbal agreement was okay.

The tenant agreed to move out of the rental unit, but refused to sign a Mutual Agreement to End Tenancy and wanted a Two Month Notice to End Tenancy for Landlord's Use of Property, and the parties agreed. The landlord also agreed to compensate the tenant one month's rent.

The tenant knew all along that the landlord was selling the property, and when the other tenant moved out, the landlord told them that they were selling and respected her choice to stay, and the landlord agreed to extend the tenancy until the end of June. The landlord did not occupy the rental home, but chose the first option on the Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant paid rent for July, 2020 in August, 2020 and said that she was entitled to compensation of one month's rent and the landlord was confused, but spoke to someone who confirmed that it was required by law.

The landlord did not list the home for sale during the tenancy, due to the Pandemic, considering the tenant's safety, and the tenant worked from home. The landlord considered the tenant's feelings, health and safety. The rental home sold and the buyer moved in on November 24, 2020.

Analysis

The *Residential Tenancy Act* specifies that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit in full, or must make an Application for Dispute Resolution and serve the tenant, claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

In this case, the parties agree that the tenancy ended on August 30, 2020. The tenant testified that on that date, the tenant gave a forwarding address in writing to the landlord, and the landlord did not dispute that testimony. The tenant also testified that she followed up with the landlord about the security deposit, reiterating the forwarding address in a text message, and a copy has been provided for this hearing. I am satisfied that the tenancy ended on August 30, 2020 and the landlord received the tenant's forwarding address in writing the same day. The landlord has not returned any portion of the security deposit to the tenant, and the parties agree that the landlord has not made an Application for Dispute Resolution claiming against the deposit. Therefore, I find that the tenant has established a monetary claim for double, or **\$1,850.00**.

The *Act* also states that where a landlord ends a tenancy for landlord's use of property, the landlord must give the tenant compensation equal to one month's rent, which the parties agree was done; the tenant did not pay rent for the last month of the tenancy.

However, the *Act* also states that if a landlord does not use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property within a reasonable time after the tenant vacates and for at least 6 months, the landlord must pay the equivalent of 12 months' rent as compensation:

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) 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.

In this case, the Notice clearly states that the rental unit will be occupied by the landlord or close family member. The parties also agree that the landlord did not occupy the rental unit, but sold it, and the landlord testified that the purchaser moved into the rental home on November 24, 2020. Therefore, I find that the tenant has established a claim equal to 12 month's rent.

The tenant testified that rent was increased verbally during the tenancy, after the first year, from \$1,850.00 per month to \$1,896.00 per month, and has provided a copy of a rent cheque in that amount. The landlord did not dispute that testimony. Therefore, I find that the tenant has established the claim in the amount of **\$22,752.00** (12 x \$1,896.00 = \$22,752.00).

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the **\$100.00** filing fee.

In summary, I find that the tenant has established claims against the landlord for double the amount of the security deposit, or \$1,850.00, \$22,752.00 as compensation under Section 49 of the *Residential Tenancy Act*, and \$100.00 for recovery of the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$24,702.00**.

This order is final and binding and may be enforced.

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 08, 2020

Residential Tenancy Branch