



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On September 6, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Act*.

The Tenant attended the hearing; however, neither Landlord attended at any point during the 24-minute hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that a Notice of Hearing package was served to each Landlord by registered mail on September 16, 2020 (the registered mail tracking numbers are noted on the first page of this Decision). The tracking histories indicated that these packages were delivered on September 18, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served the Notice of Hearing packages.

She also advised that she served her evidence to the Landlords by registered mail on November 23, 2020. (the registered mail tracking numbers are noted on the first page of this Decision). The tracking histories indicated that these packages were delivered on November 24, 2020. As this evidence was served on the Landlords pursuant to the timeframe requirements of Rule 3.14 of the Rules of Procedure, I am satisfied that the Landlords have been sufficiently served this evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to monetary compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the most current tenancy started on March 1, 2020 as a month-to-month tenancy, and ended when she gave up vacant possession of the rental unit on July 16, 2020. She provided the Landlords with her 10-day notice to move early, on July 3, 2020, after being served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). Rent was established at \$1,300.00 per month and was due on the first day of each month. A security deposit of \$650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence. She stated that the portion of the rental unit that was rented to her as part of the tenancy was the basement suite of this property.

She advised that due to COVID, the Landlords did not want documents served pursuant to the *Act*, so they requested any documents to be emailed. She stated that she emailed the Landlords her 10-day notice to move early on July 3, 2020 and she also texted this to them on that same day. Included in these messages was her forwarding address. She submitted a screen shot of text messages between her and the Landlords which demonstrate that the Landlords confirmed they received this document.

As the Landlords have not returned her security deposit and as she never gave them written consent to keep any of it, she is seeking a return of double the security deposit, in the amount of **\$1,300.00**, pursuant to Section 38 of the *Act*.

In addition, she advised that the Landlords served the Notice to her on June 28, 2020 by hand. The reason the Landlord checked off on the Notice was because "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.)" The effective end date of the tenancy was noted on the Notice as August 31, 2020.

She stated that after receiving the Notice, she gave her 10-day written notice to end her tenancy early pursuant to Section 50 of the *Act*. She served this notice to the Landlords by email and text message, in accordance with their request, on July 3, 2020 that stated that she would be giving up vacant possession of the rental unit on July 16, 2020. She paid her rent in full for July 2020. The Tenant is seeking compensation in the amount of **\$650.00** for the return of half of July 2020 rent, and **\$1,300.00** as she did not receive one month's rent compensation that she is entitled to after being served the Notice, pursuant to Section 51(1) of the *Act*. She testified that the Landlords advised her that they would not be returning any of these monies and would be seeking legal advice.

As an aside, she stated that the Landlords have not likely used the basement suite for the stated purpose on the Notice. She was advised that the Landlords are required to use the property, within a reasonable amount of time after the effective date of the Notice, for the reason stated on the Notice for a period of at least six months. Should the Landlords not follow through with this pursuant to the Notice, the Tenant could seek compensation in the amount of twelve months' rent pursuant to Section 51 of the *Act*.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

The undisputed, solemnly affirmed testimony is that the Landlords requested to be contacted by email and that the Tenant followed this direction by providing her forwarding address to the Landlords on July 3, 2020 by email and text. Furthermore, the Tenant submitted documentary evidence demonstrating that the Landlords confirmed that they received this on July 3, 2020 at 7:52 PM. Consequently, I am satisfied that the Landlords received the Tenant's forwarding address on July 3, 2020.

Moreover, the tenancy ended when the Tenant gave up vacant possession of the rental unit on July 16, 2020. As the Tenant did not provide written authorization for the Landlords to keep any amount of the deposit, and as the Landlords did not return the deposit in full or make an Application to keep the deposit within 15 days of July 16, 2020, I find that the Landlords did not comply with the requirements of Section 38 and illegally withheld the deposit contrary to the *Act*.

Ultimately, I am satisfied that the Tenant has substantiated a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenant a monetary award in the amount of **\$1,300.00**.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Regarding the Tenant's claim for one month's compensation owed to her when she was served the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

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.

The undisputed evidence is that the Tenant was entitled to one month's compensation after being served this Notice and that the Landlords have not compensated her in this amount on or before the effective date of the Notice, pursuant to Section 51 of the *Act*.

As I am satisfied that the Landlords did not compensate the Tenant in this amount required by law, I grant the Tenant a monetary award of one month's rent of **\$1,300.00**.

With respect to her claim for compensation in the amount of a half month's rent for July 2020, Section 51 of the *Act* reads in part as follows:

- 50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

When reviewing the totality of the evidence before me, the Tenant was in a month-to-month tenancy and was then served the Notice to end that tenancy. Furthermore, she exercised her right under Section 50, on July 3, 2020, to end her tenancy early on July 16, 2020. As the undisputed evidence is that the Tenant paid for the full rent for July 2020 and has not been refunded for the remaining balance of July 2020 that she did not occupy the rental unit, I am satisfied that the Tenant is entitled to compensation in the amount of **\$650.00** in accordance with Section 50 of the *Act*.

Pursuant to Sections 38, 51, and 67 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenant

Item	Amount
Double the security deposit	\$1,300.00

One month's rent compensation	\$1,300.00
Half a month's rent compensation for July 2020	\$650.00
Total Monetary Award	\$3,250.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$3,250.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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.

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 18, 2020

Residential Tenancy Branch