



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On September 24, 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. The Landlord also attended the hearing with G.D. attending as his agent. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord by hand on September 29, 2020 and the Landlord confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

She also advised that she did not serve her evidence to the Landlord because she did not realize that she was required to. As this evidence was not served on the Landlord pursuant to the requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

The Landlord advised that he did not submit any evidence for consideration on this file.

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.

As a note, during the hearing, the Landlord and G.D. engaged in multiple conversations when the Tenant was providing submissions. They were cautioned twice that it was

disruptive to the proceeding and that if they wanted to engage in a separate conversation, they should mute their line. After they continued to do so after being warned, they were muted from participating in the teleconference until they were permitted back into the hearing.

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 Landlord advised that the tenancy started sometime in 2006 when he purchased the rental unit and assumed the Tenant from the previous owner. He stated that the tenancy ended before August 31, 2020 but he was not sure when exactly. He testified that rent was established at \$550.00 per month and that it was due on the first day of each month. As well, he stated that a security deposit of \$250.00 was paid. A written tenancy agreement was not created as the Landlord did not realize that he was required to have one in accordance with the *Act*.

The Tenant advised that the Landlord had always owned the property and that she has never had another landlord while living there. She stated that the tenancy started with the Landlord on July 15, 2002 and that the tenancy ended on August 30, 2020. She agreed that rent was \$550.00 per month and that it was due on the first day of each month. However, she stated that she had paid a security deposit in the amount of \$275.00.

She advised that she provided the Landlord with her forwarding address in writing on August 30, 2020 when she met him to return the keys and walk through the rental unit. She had an acquaintance with her to witness this. She stated that the Landlord took that piece of paper, put it in his pocket, and showed her what he believed to be deficiencies in the rental unit. He told her that he would not be returning her deposit.

The Landlord agreed that they met on August 30, 2020 and that they walked through the rental unit; however, he denied that she provided him with a forwarding address in writing. He stated that there was lots of garbage and damage to the rental unit, that he asked her to rectify these problems, and that he eventually fixed them himself using the security deposit. He confirmed that he did not have any written consent from the Tenant to keep any amount of the deposit.

As the Landlord has not returned her security deposit, and as she never gave him written consent to keep any of it, she is seeking a return of double the security deposit, in the amount of **\$550.00**, pursuant to Section 38 of the *Act*.

In addition, she advised that the Landlord served her with a 54 day notice that the Landlord composed on his computer, that the Landlord's realtor then gave her some form of a two month notice that she would not sign, and then the Landlord served her with the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on June 30, 2020 by hand. The reason the Landlord checked off on the Notice was because "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit." The effective end date of the tenancy was noted on the Notice as September 30, 2020. She stated that she was told by the Landlord that if she could leave a month early, she would receive one month's rent, but the Landlord never compensated her. The Tenant is seeking compensation in the amount of **\$550.00** 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*.

The Landlord advised that he served the Tenant with two notices only. He stated that he served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property before June 30, 2020 that had an effective date of August 31, 2020 on it. However, he stated that the Tenant needed more time, so he then served another Two Month Notice to End for Landlord's Use of Property on June 30, 2020 with an effective date of September 30, 2020. He advised that the reason he did not compensate the Tenant in the amount of one month's rent is because it was his belief that he was not required to as he gave the Tenant an extra month's notice to vacate. He stated that the Tenant never gave any written notice to end the tenancy early, and the Tenant confirmed this.

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 Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives 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 Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

With respect to the dispute over how much of a security deposit was paid at the start of the tenancy, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the evidence must be weighed and a determination of credibility must be assessed. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

I also find it important to note that it was admitted by the Landlord that he knew little of his rights and responsibilities under the *Act* and that while he had been a Landlord for a considerable period of time, he attributed his ignorance of any knowledge of the *Act* as due to him not having to be involved with any disputes before. Furthermore, the Landlord had little, if any, of the documentation that he was required to complete in accordance with the *Act*.

When considered in its totality, I find that the Landlord's submissions throughout the hearing were inconsistent and contradictory with earlier statements he had made, and much of his submissions were not logical or consistent with common sense or ordinary human experience. In contrast, I found the Tenant's submissions to be more consistent and compelling. As such, I am doubtful of the credibility or reliability of the submissions relayed by the Landlord, and I prefer the Tenant's submissions on the whole. While I agree with the Landlord that the *Act* does not require him to take half a month's rent for a security deposit, I find it more likely than not that the Landlord collected \$275.00 as a security deposit at the start of the tenancy.

With respect to whether the Landlord received the Tenant's forwarding address in writing on August 30, 2020, the consistent evidence is that the Landlord believed that the Tenant was responsible for some alleged deficiencies in the rental unit, that he did not have the Tenant's authorization to keep the security deposit, and that he did not return it or make an Application to claim against it at any point. Furthermore, he admitted to using that deposit towards whatever damage or repairs he believed the Tenant was responsible for.

Based on the Landlord's admitted unfamiliarity with the *Act*, given that there is no dispute that he stated that he would not return the deposit, and given my doubts about the truthfulness of his submissions, I find it more likely than not that he was provided with a forwarding address in writing on August 30, 2020. I am also satisfied that he did not have an understanding that the *Act* required him to deal with the deposit in a particular manner at the end of the tenancy after receiving a forwarding address in writing and that he could not simply use the deposit without the Tenant's written consent.

Based on my findings, I am satisfied that the Tenant provided her forwarding address in writing to the Landlord on August 30, 2020. As the Tenant did not provide written authorization for the Landlord to keep any amount of the deposit, and as the Landlord did not return the deposit in full or make an Application to keep the deposit within 15 days of August 30, 2020, I find that the Landlord 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 **\$559.74**, which is calculated as double the deposit, plus interest.

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 because 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.

Furthermore, Section 50 of the *Act* outlines the Tenant's responsibilities if she wanted to end the tenancy early after being served this Notice.

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].

While the Landlord claimed to have served two, separate Two Month Notices to End Tenancy for Landlord's Use of Property, I find it important to note that the Landlord provided contradictory dates for when he served these notices. Furthermore, even if the Landlord did serve two, separate Two Month Notices to End Tenancy for Landlord's Use of Property as he alleges, it does not make any logical sense why he would do so. I find that the Landlord's submissions on this point were equally inconsistent and unlikely, which further contributed to and caused doubts, in my view, about the reliability of his submissions.

Regardless, the undisputed evidence is that the Tenant was served this Notice on at least one occasion on June 30, 2020 and she was therefore entitled to one month's compensation. Furthermore, the undisputed evidence is that the Tenant never provided the Landlord with her 10 days' written notice to end the tenancy early. As such, I am satisfied that the Tenant is entitled to one month's rent compensation pursuant to Section 51 of the *Act*, less the pro-rated amount of ten days' rent because she did not give the proper notice to end the tenancy early. Therefore, I grant the Tenant a monetary award in the amount of **\$361.64**. This is calculated as \$550.00 X 12 months / 365 days X 20 days.

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 Landlord to the Tenant

Item	Amount
Double the security deposit plus interest	\$559.74
One month's rent compensation	\$361.64
Total Monetary Award	\$921.38

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$921.38** 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.

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 19, 2021

Residential Tenancy Branch