



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNETC, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail on December 31, 2020 in accordance with Section 89 of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the application and notice of hearing on January 5, 2021. The Tenants sent their evidence package to the Landlord by express post on April 12, 2021. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of a mobile home started in March 2017. Rent of \$1,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected

\$500.00 as a security deposit. The Landlord lived in the house located on the same property as the unit and there were three additional mobile homes on the same property. The Tenant's unit was the only mobile home with a fenced yard and two bedrooms. The Landlord gave the Tenants a two-month notice to end tenancy for landlord's use dated August 14, 2020 (the "Notice"). The Notice set out an effective date of November 1, 2020 and the Tenants moved out of the unit on that date. The Tenants provided their forwarding address in writing to the Landlord by registered mail on November 23, 2020. The Tenants received return of the security deposit on December 20, 2020.

The Tenant claims return of double the security deposit.

The Notice sets out that the tenancy was ended for the Landlord to occupy the unit. The Landlord did not occupy the unit and instead listed the unit for rent for November 1, 2020. In mid November 2020 the Tenants were informed by the neighbours of the unit that it had been rented. In mid November 2020 the Tenant's brother also went to the unit and spoke with persons at the unit who confirmed that they were the new tenants of the unit. The Landlord's ex spouse and father of the Landlord's children informed the Tenants that the Landlord did not move into the house after November 1, 2020 and to date. The Tenants provide affidavits from the ex-spouse and the brother. The Tenants also provide copies of two online advertisements for a unit at the dispute address noting a fenced yard and two bedrooms with available for November 1, 2020. Because of the details of the yard and bedrooms the Tenant knows the advertisements were for their unit.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section,

the landlord must pay the tenant double the amount of the security deposit. Section 90 of the Act provides that a document given or served by mail is deemed to be received on the 5th day after it is mailed.

Based on the undisputed evidence that the Tenants sent their forwarding address to the Landlord by registered mail on November 23, 2020 I find that the Landlord received the forwarding address on November 28, 2020 and that the Landlord had until December 13, 2020 to repay the security deposit. Based on the undisputed evidence that the Tenants did not receive return of the security deposit until December 20, 2020 I find that the Landlord failed to return the security deposit within the 15 days and must now pay the Tenant double the security deposit plus zero interest of **\$1,000.00**. Deducting the **\$500.00** already received leaves **\$500.00** remaining owed to the Tenants.

Section 51(2) of the Act provides that 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.

Based on the Tenant's undisputed evidence that the Landlord did not occupy the unit I find that the Tenant has substantiated an entitlement to the equivalent of 12 months' rent of **\$12,000.00**.

As the Tenant has been successful with their claims, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$12,600.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$12,600.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 30, 2021

Residential Tenancy Branch