



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 dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

AK appeared for the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on March 31, 2020, and was to end on March 31, 2021. Monthly rent was set at \$1,700.00, payable on the last day of the month. The landlord collected a security deposit in the amount of \$850.00, which the landlord still holds. Both parties confirmed that this tenancy ended on October 1, 2020.

The tenant testified in the hearing that “everything was verbal”, and that the tenants had moved out after the landlord had informed them that they were required to move out of the rental unit for landlord’s use. The tenants submitted in evidence their text message to the landlord informing the landlord of their obligations. Both parties confirmed that the landlord had never served the tenants with a Notice to End Tenancy for Landlord’s Use. The tenants applied for compensation for the early end of the fixed-term tenancy. The landlord testified that the tenants had decided to move out without giving proper notice, and not pursuant to any Notice to End Tenancy from the landlord.

The tenant confirmed in the hearing that they had never provided the landlord with a forwarding address in writing. The landlord confirmed in the hearing that they had filed an application for monetary losses associated with this tenancy on May 12, 2021, and are awaiting the hearing scheduled for November 9, 2021.

Analysis

Section 38(1) of the *Act* requires a 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 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 return the tenant’s security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant’s provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an

amount from a security or pet damage deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

In this case, I find that it was undisputed that the tenants had failed to provide the landlord with their forwarding address in writing. As the provision of a valid forwarding address is a requirement of section 38 of the *Act*, I find that the tenants are not entitled to compensation under section 38 of the *Act*. Furthermore, as the landlord has filed an claim against the security deposit, and a hearing is scheduled for a future date to deal with that application, the landlord has the right to continue holding the security deposit until a decision is made by the Arbitrator for that claim. Accordingly, I dismiss the tenants’ application for the return of their security deposit without leave to reapply.

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord’s use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice 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) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the tenant’s testimony is that the landlord had communicated to the tenants that they were required to vacate the home, I find the landlord did not end the tenancy by way of a Notice to End Tenancy that complies with section 52(e) of the *Act*. The tenant applied for compensation pursuant to section 51 of the *Act*, which requires that a notice be given under section 49 of the *Act*.

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...

Although the tenant's testimony was that they had moved out as required by the landlord, I am not satisfied that the tenants were ever served with a 2 Month Notice pursuant to Section 49 of the *Act*. As this tenancy did not end pursuant to a Notice to End Tenancy under section 49 of the *Act*, I find that the tenants are not entitled to monetary compensation pursuant to section 51 of the *Act*.

As the filing fee is normally rewarded to the successful party after a hearing, I dismiss the tenants' application to recover the filing fee without leave to reapply.

Conclusion

The tenants' entire application is dismissed 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: June 10, 2021

Residential Tenancy Branch