



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on July 19, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51 of the Act;
- a monetary order for return of the security or pet deposit; and,
- recovery of the filing fee.

The Tenants attended the hearing and provided affirmed testimony. The Tenants stated they sent each of the Landlord's a copy of the Notice of Dispute Resolution Proceeding and all evidence by registered mail on March 11, 2021. Proof of mailing was provided into evidence. The Tenants stated that they sent this package to the address that was listed as the address for service on the 2 Month Notice to End Tenancy for Landlord's Use (the Notice). The Tenants assert that the Landlord's still reside at this same address, even though it has been over a year since they moved out. Pursuant to section 89 and 90 of the Act, I find the Landlord's are deemed served with these packages on March 16, 2021, five days after they were mailed to their address for service.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to compensation for loss or money owed, pursuant to section 51 of the Act?

Background and Evidence

The Tenants stated that monthly rent was \$1,950.00, and was due on the first of the month. The Tenants stated that the Landlord still holds their security deposit in the amount of \$975.00.

The Tenants stated that they received a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on July 31, 2019, with an effective date of September 30, 2019. The Tenants stated that they moved out of the rental unit on September 2, 2019. The Tenants stated that they paid rent, in full, for August, and September 2019, and never received a free month's rent, pursuant to section 51 of the Act.

After receiving the Notice at the end of July, the Tenants found another place to live, and gave their 10 Day Notice to terminate the tenancy early. The Tenants stated that they hand delivered this document to the Landlord on August 23, 2019. A copy of this letter was provided into evidence. This letter states that the Tenants are giving 10 days' notice to leave and end the tenancy on September 2, 2019. The letter also contains the Tenant's forwarding address, for the return of the security deposit. The Tenants stated that, as requested by the Landlord, they gave this letter to the Landlord's agent (as per the text message in evidence), and the letter was signed as received by the Landlord's agent on August 23, 2019. The Tenants stated that this letter was delivered in person.

The Tenants are seeking two items on this application. The first item the Tenants listed was as follows:

"We were given a 2 month eviction notice and the 2 month notice to end tenancy for landlord use states that Landlord must pay compensation equal to one months rent. We moved out early thus we are owed for 28 days of rent that we paid which equals \$1820.00"

The amount claimed by the Tenants on this part of their application was \$1,820.00, which is the per diem rent they are seeking to be returned to them for September 3-30,

2019 (28 days). The Tenants stated they are seeking this amount because they provided the 10 Days Notice to end tenancy early, and they legally ended the tenancy and moved out with 28 days left in the month, which they paid for, and should be refunded. The Tenants also referred to the free month's rent they are entitled to upon receipt of the 2 Month Notice.

The second item on the Tenant's application is for double their security deposit (2x\$975.00) because the Landlord failed to return their deposit or file an application for dispute resolution within 15 days of the end of their tenancy.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First, I turn to the Tenants' request to obtain one months' compensation based on the Notice, pursuant to section 51 of the Act, and for the per diem rent rebate for vacating early. I note the Tenants listed on their application that they were seeking \$1,820.00 for this item, but on the application form, and on the Notice of Dispute Resolution, which was sent to the Landlords, the Tenants spoke to being owed one month's compensation, as well as being owed 28 days of rent overpayments. I have reviewed the Tenants application and it appears the Tenants made an arithmetic error when they totalled the amount they are owed under this portion of the application. I find the Tenants are entitled to recover the rent they paid for September 3 – 30, 2019, as well as compensation equivalent to one month's worth of rent. As these amounts are legislated, based on the Landlord's issuance of the 2 Month Notice, I will award both amounts for the reasons set out below.

The Tenants stated that they paid rent, in full, for August and September 2019, and the Landlord refused to pay any compensation.

I turn to the following portion 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.*

In this case, I find the Landlord is obligated to compensate the Tenants, pursuant to section 51(1) of the Act, in the amount of \$1,950.00, which is equivalent to one months' rent. This amount is compensable upon the Tenants' receipt of the Notice and should be provided to the Tenants prior to the effective date of the Notice. In this case, no compensation was paid to the Tenants, despite receiving the Notice.

I also note the following portion of the Act:

Tenant may end tenancy early following notice under certain sections

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].

I note that the Tenants provided 10 days' notice that they were going to vacate early, following receipt of the Notice. I accept the Tenants statements that they served the Landlord's agent with their 10 Day Notice, in person, on August 23, 2019. I find this letter was served on that day, and acted as the Tenant's 10 Day Notice to End the Tenancy Early, as well as their forwarding address in writing. The effective date of the Tenants' Notice was September 2, 2019.

Ultimately, the tenancy ended on September 2, 2019, which is the effective date of their 10 Day Notice and the date they moved out. I find the Tenants gave proper 10 Day

Notice that they would terminate the tenancy early, and I find they legally ended the tenancy on September 2, 2019.

As per Section 50(3) of the Act, the one month's rent that the Tenants are entitled to under Section 51 of the Act is not related to the refund the Landlord's must pay the Tenants for rent that was paid beyond the effective date of their 10 Day Notice to Vacate Early. In other words, the Tenants are awarded \$1,950.00, which is the compensation they are entitled to pursuant to section 51(1) of the Act. Plus, the Tenants are also entitled to recover the per diem rent for days they paid for, but didn't use, after the effective date of their 10 Day Notice, which amounts to \$1,820.00. I award \$3,770.00 for this item.

Next, I turn to the Tenant's request for double the security deposit.

Section 38(1) of the Act requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the security deposit.

In this case, the tenancy ended on September 2, 2019, as laid out above. As stated above, I find the Landlord received the letter, containing the forwarding address, from the Tenants on August 23, 2019, which is the day they hand delivered it to the Landlord's agent, and the day he signed for it's receipt. A copy of this is in evidence, and it clearly lists the Tenants' forwarding address.

Pursuant to section 38(1) of the Act, the Landlord had 15 days after the end of the tenancy (until September 17, 2019) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act. Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$975.00 x 2).

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I find the Tenants are entitled to a monetary order as follows:

- \$3,770.00 which represents their free months' rent (\$1,950.00), plus the 28 days rent they paid for but didn't use in September 2019 (\$1,820.00).
- \$1,950.00 for double the security deposit
- \$100.00 for the cost of the filing fee
- **Total: \$5,820.00**

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$5,820.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: July 20, 2021

Residential Tenancy Branch