



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, MNETC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51.

The landlords' agent (the "agent"), the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called witness C.D.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the landlords were served via registered mail. I find that the landlords were served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

At the start of the hearing the advocate submitted that in addition to the claims outlined in the Notice of Dispute Resolution Proceeding, the tenant is seeking damages for loss of quiet enjoyment pursuant to section 28 of the *Act* and damages for the landlords' restriction of services and facilities pursuant to section 27 of the *Act*.

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In the hearing I declined to amend the tenant's application for dispute resolution because the landlords were not provided with an opportunity to hear the new claims and respond to those claims. I find that the landlords could not have reasonably anticipated that the tenant would seek damages for restriction of services and loss of quiet enjoyment when the original claim is for monetary compensation under section 51 of the *Act*, overpaid rent, and the return of the security deposit. I note that the written legal submissions and monetary worksheet drafted by the tenant's previous advocate, do not mention section 27 or 28 or claims for loss of quiet enjoyment or loss of services or facilities.

The advocate submitted that the previous advocate erroneously indicated on this application for dispute resolution that the tenant paid a security deposit of \$650.00 when it was really \$600.00. The original application for dispute resolution seeks a monetary award for double the return of the security deposit in the amount of \$1,300.00. The advocate submitted that the tenant is only seeking double the security deposit in the amount of \$1,200.00. The agent agreed that the security deposit paid was \$600.00.

Given that the original claim of \$650.00 was made in error and it is agreed by both parties that the tenant paid a security deposit of \$600.00, I find that the landlords could

reasonably have anticipated this amendment. Pursuant to section 64 of the *Act* I amend the tenant's monetary claim for double the security deposit to \$1,200.00.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2011 and ended on October 15, 2020. The original landlord was landlord C.A.'s father. When landlord C.A.'s father passed away, landlord C.A. became the landlord. Monthly rent in the amount of \$650.00 was payable on the first day of each month.

After landlord C.A.'s father passed away, the tenant and landlord C.A. signed a written tenancy agreement on a standard Residential Tenancy Branch Form (RTB #1). Pages 1-3 and 6 (the signing page) were entered into evidence. The tenancy agreement states that the tenant paid a security deposit of \$600.00 on May 1, 2011. The signed tenancy agreement states that a pet damage deposit was not paid by the tenant. The signed tenancy agreement does not mention any other deposits.

The tenant testified that at the start of this tenancy he paid landlord C.A.'s father a security deposit of \$600.00 and a damage deposit of \$600.00. The tenant testified that this was a handshake agreement. No documentary evidence, other than the tenant's sworn affidavit, to support the payment of two \$600.00 deposits was entered into evidence.

The agent testified that the parties discussed the deposit paid when this tenancy agreement was filled out and the landlords took the tenant at his word that he paid the original landlord a \$600.00 security deposit and recorded it on the tenancy agreement. The agent testified that the tenant did not tell them about any other deposits. Both parties agree that the landlords returned a \$600.00 deposit to the tenant on October 10, 2020 in addition to \$100.00 for compensation for the inconvenience of moving out.

The agent testified that the landlords do not believe the tenant paid two deposits, and that the tenant more likely paid one security deposit of \$600.00 and another \$600.00 for the first months' rent. The agent testified that the tenant did not tell them about a second deposit when the tenancy agreement was signed. I asked the tenant why the tenancy agreement only mentions one deposit in the amount of \$600.00 and the tenant testified that he did not read every page of the tenancy agreement and he guessed that the landlords did not know about the second deposit because they never discussed it.

The tenant testified that he left a note at the subject rental property with his forwarding address on October 15, 2021. The tenant's written submissions state:

The Applicant did not provide a forwarding address at the time of move-out. On March 1, 2021 the Applicant's legal advocate served to the Respondents via registered mail a letter with a forwarding address and requesting payment of the Pet Security Deposit, One Months Rent, and the prorated rent for the balance of October, 2020.

The agent testified that she assumes the landlords received the tenant's forwarding address but did not know how or when. The tenant entered into evidence a registered mail receipt dated March 1, 2021.

The advocate submitted that since the entirety of the deposits have not been returned, the tenant is entitled to double the unpaid deposit in the amount of \$1,200.00. The tenant's written submissions refer to section 38 of the *Act*.

The tenant testified that in June of 2020 the landlords informed him of their plan to renovate the subject rental property and to move in. The tenant testified that the landlords told him that he could not move into another rental property owned by the landlords. The tenant testified that on October 3, 2020 the landlords verbally told him that he had to move out immediately because major renovations needed to be done and because they did not plan on fixing the broken heater until after winter. The tenant testified that the landlords also informed him at that time that he could not move into

one of their other properties.

The tenant testified that he was never served with a notice to end tenancy on a Residential Tenancy Branch form. The tenant testified that he was able to find a new place to live on short notice and moved out on October 15, 2020. The tenant testified that the poor condition of the subject rental property, due to the renovations being done by the landlord, also motivated him to move out quickly. Witness C.D. testified that he is the tenant's brother and visited him in September of 2020. Witness C.D. testified that the subject rental property was in a very poor condition at the end of this tenancy.

The agent testified that the tenant was provided with nearly a year's verbal notice of the landlords' intention to renovate and move into the subject rental property. The agent testified that the subject rental property has an upper and a lower suite and the tenant resides in the lower suite. The agent testified that in November of 2019 the landlords provided both upper and lower tenants verbal notice of their plan to start renovating the subject rental property in the spring of 2020 and move into the subject rental property in the fall of 2020. The agent entered into evidence a signed letter from the upper tenant which states that the upper tenant received the notice described by the agent above.

The tenant's written submissions state:

The Residential Tenancy Act provides a process whereby a landlord may evict a tenant for personal use of the rental, or for extensive renovations that require the rental to be unoccupied:

- 44 (1) A tenancy ends only if one or more of the following applies:
 (v) section 49 [landlord's notice: landlord's use of property];
49 (1) In this section:

"close family member" means, in relation to an individual,
 (a) the individual's parent, spouse or child, or
 (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by
 (a) one individual, or
 (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
- (b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 4 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

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.

The Respondents did not provide the Applicant with either a Two Month Notice

To End Tenancy For Landlord's Use or a Four Month Notice To End Tenancy For Renovations. These types of eviction provide a 2-4 month notice to the tenant and the tenant is entitled to the final month rent-free, as compensation for ending the tenancy early. The Applicant was not given one months rent as compensation for ending the tenancy early.... [The tenant] is requesting from the Respondents....One month's rent compensation for moving due to renovation, a total of \$650.00

Both parties agree that the tenant paid October 2020's rent in the amount of \$650.00 in full. Both parties agree that the landlords owe the tenant rent paid from October 16-31, 2020, for a total of \$335.48.

Analysis

Security Deposit

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the tenancy agreement entered into evidence, which is signed by both parties, and the agent's testimony, I find that the tenant has not proved, on a balance of probabilities, that a second \$600.00 deposit was paid to the original landlord. I find, on a balance of probabilities, that the parties discussed the deposits paid by the tenant to the

previous landlord when the tenancy agreement was signed, otherwise the \$600.00 security deposit would not have been recorded. I find that had the tenant paid a second \$600.00 deposit, it would have been recorded on the tenancy agreement. The tenant's claim for the return of double the second \$600.00 deposit is dismissed without leave to reapply because the tenant did not prove, on a balance of probabilities, that it was ever paid to the original landlord.

Based on the testimony of both parties, I find that the landlords returned the \$600.00 security deposit in accordance with section 38(1) of the *Act*. The tenant's application for the return of the security deposit is therefore dismissed without leave to reapply.

Section 51 Claim

Section 49(3) of the *Act* states:

(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* states:

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.

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy 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)except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with

section 45.2 [*confirmation of eligibility*], and
(e)when given by a landlord, be in the approved form.

The triggering event for the possibility of compensation under section 51 of the *Act*, is the service on the tenant of a written Notice to End Tenancy pursuant to section 49 of the *Act*. That Notice to End Tenancy must conform to the form and content requirements of section 52 of the *Act*. An oral Notice to End Tenancy is not an enforceable or a valid way of ending a tenancy under the *Act*. The tenant was under no legal obligation to vacate the subject rental property based on the landlords' verbal notice to end tenancy. Because a section 49 Notice to End Tenancy was not served on the tenant, the tenant is not entitled to section 51 compensation. The tenant's application for a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51, is therefore dismissed without leave to reapply.

Monetary Claim for Damage or Compensation

As both parties agree that the landlords owe the tenant rent paid from October 16-31, 2020 in the amount of \$335.48, I award the tenant a Monetary award in the amount of \$335.48.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$335.48.

The tenant is provided with this Order 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: August 17, 2021

Residential Tenancy Branch