



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 damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant TD (the "tenant") primarily spoke on behalf of both applicants. The landlord was represented by their agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The landlord testified that they received the tenant's application and materials. Based on the undisputed testimony I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

The tenant disputed that they were served with the landlord's evidence which the landlord testified was sent by registered mail. The landlord provided a valid Canada Post tracking number for their package. Much of their materials consist of photographs of the rental suite and a signed authorization by the landlord appointing their agent.

Pursuant to section 71 of the *Act* and Rule of Procedure 3.17 as I find no breach of the principles of procedural fairness or natural justice I allow the inclusion of the landlord's evidence and find it sufficiently served on the tenant in accordance with section 71.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover all or a part of their security deposit?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on December 15, 2018 and ended on February 28, 2021. Monthly rent was \$1,200.00 payable on the first of each month. A security deposit of \$600.00 was paid by the tenants and is still held by the landlord. No condition inspection report was prepared for this tenancy.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated February 8, 2021. The reason provided on the notice for the tenancy to end is that:

All of the conditions for 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 a close family member intends in good faith to occupy the rental unit.

A copy of the 2 Month Notice and Buyers Notice to Seller was submitted into documentary evidence.

The tenant gave 10 days notice pursuant to section 50(1) on February 18, 2021 and vacated the rental unit on February 28, 2021.

The tenants seek a monetary award in the amount of \$1,200.00, the equivalent of one month's rent pursuant to the tenancy agreement and section 51(1) of the *Act*.

The tenants submit that they provided the landlord with their forwarding address in writing by a letter dated March 1, 2021 which was hand delivered to the spouse of the landlord. The landlord disputes that they were ever provided a forwarding address by the tenants and in any event say that the rental unit required some cleaning and repairs for which they retained the deposit for the tenancy.

The tenants submit that they have not given written authorization that the landlord may retain any portion of the security deposit.

Analysis

Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not complete a condition inspection report in accordance with the regulations.

I accept the undisputed evidence of the parties that no condition inspection report was prepared at any time for this tenancy. Accordingly, I find that the landlord has extinguished their right to retain the security deposit for this tenancy.

Pursuant to section 38 of the *Act* a landlord who has extinguished their right to claim against a deposit by failing to prepare a condition inspection report must return the tenant's security deposit in full within 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If the fail to do so, in accordance with section 38(6)(b) of the *Act*, the landlord must pay an amount equivalent to double the value of the security deposit.

The landlord disputes that they were served with the tenants' forwarding address in writing while the tenants testify that they served the landlord by hand delivering the forwarding address to the landlord's spouse on March 1, 2021.

Section 88 provides the manner in which a document may be served and includes:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with the agent of the landlord;
- ...
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person

I find the tenants' submissions to be more believable and supported in the documentary materials than that of the landlord. I find the landlord's testimony consists of simply refuting the tenants' version of events. The tenant provided cogent, consistent testimony which included surrounding details which I found more persuasive. Accordingly, I find that the landlord was served with the tenants' forwarding address in accordance with section 88 of the Act on March 1, 2021.

I find that the landlord failed to return the security deposit in full within 15 days of March 1, 2021 and that they have extinguished their right to retain the deposit by failing to prepare a condition inspection report in accordance with the Act. I find the landlord's submissions about the condition of the rental unit to be irrelevant to the matter at hand. A landlord may not claim against the security deposit or unilaterally fail to return it without taking the appropriate legislative steps. A landlord is in the business of accepting payment for providing rental units and they ought to be familiar with the pertinent legislation and rules.

Therefore, I find the tenants are entitled to a monetary award in the amount of \$1,200.00, double the value of the security deposit for this tenancy.

Section 51(1) provides that:

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.

I accept the undisputed evidence of the parties that the tenants were served with a valid 2 Month Notice under section 49 on or about February 8, 2021. I further accept the evidence of the parties that the tenants were not provided compensation in the amount equivalent to one month's rent as they are entitled under section 51(1).

Therefore, I issue a monetary award in the tenants' favour in the amount of \$1,200.00, the equivalent of one month's rent under the tenancy agreement.

As the tenants were successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,500.00. 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: October 26, 2021

Residential Tenancy Branch