



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlords did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing. The Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended the hearing and was given a full opportunity to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served each of the landlords with their application for dispute resolution and evidence by registered mail sent on January 28, 2022. The tenant provided valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that each of the landlords is deemed served with the tenant's materials on February 2, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the tenant requested to amend the amount of their monetary claim stating that there were inadvertent omissions in their application and arithmetic errors. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as correcting errors is reasonably foreseeable, I allow the tenant's request and amend the amount of their monetary claim from \$21,600.00 to \$24,300.00.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover their filing fee from the landlords?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This periodic tenancy began on April 30, 2020. The monthly rent was \$1,800.00 payable on the first of each month. A security deposit of \$900.00 was paid to the landlords and has not been returned to the tenant. No condition inspection report was prepared at anytime for this tenancy.

The tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use dated February 6, 2021 with an effective date of May 1, 2021. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or a close family member. The tenant vacated the rental unit in accordance with the 2 Month Notice on April 30, 2021. The tenant was not provided compensation in an amount equivalent to one month's rent and paid the rent in full throughout the tenancy.

The tenant did not provide written authorization that the landlord may retain any portion of the security deposit for this tenancy. The tenant testified they provided a forwarding address to the landlord in writing on May 1, 2021 when the tenancy ended.

The tenant discovered in June 2021 that the landlord, instead of occupying the rental unit as stated on the 2 Month Notice, has listed the property for sale. The tenant submitted into evidence photographs of the property with a For Sale sign displayed in the front and online listings showing the property for sale as at June 30, 2021.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed testimony of the tenant that this tenancy ended on April 30, 2021 and the tenant gave the landlord the forwarding address in writing on May 1, 2021. The landlord did not return the security deposit to the tenant nor did they file an application for dispute resolution for authorization to retain the deposit within 15 days of May 1, 2021 as provided under the *Act*.

Furthermore, I accept the undisputed testimony that no condition inspection report was prepared at any time for this tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlords have neither filed for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,800.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(1) of the *Act* provides that a tenant who receives a notice to end tenancy for landlord's use of property is entitled to received from the landlord an amount equivalent to one month's rent payable under the tenancy agreement.

The tenant gave undisputed testimony that they have not been given any amount from the landlord and they have paid the rent in full throughout the course of the tenancy until April 30, 2021.

I therefore find that pursuant to section 51(1) of the Act the tenant is entitled to a monetary award in the amount of \$1,800.00, the equivalent of one month's rent under the tenancy agreement.

Section 51(2) of the *Act* states that a landlord must pay the tenant an amount that is equivalent to 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,

In the 2 Month Notice dated February 6, 2021, the landlord indicated that the landlord or a close family member, intends to occupy the rental unit.

The tenant gave evidence that instead of being occupied by the landlord or a family member the rental property was placed on the market for sale. The tenant provided documentary evidence by way of the online listings showing the rental unit as available for purchase on June 30, 2021.

I accept the evidence that the landlords did not use the rental unit for the purposes stated on the 2 Month Notice for a period of at least 6 months' duration or at all.

Consequently, I find that the tenant is entitled to a monetary award of \$21,600.00, the equivalent of 12 times the monthly rent of \$1,800.00 payable under the tenancy agreement.

As the tenant was successful in their application they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$25,300.00 on the following terms:

| Item | Amount |
|---|--------------------|
| Double Security Deposit (\$900.00 x 2) | \$1,800.00 |
| 1 Month Rent pursuant to s51(1) | \$1,800.00 |
| 12 times Monthly Rent pursuant to s51(2) (\$1,800.00 x 12) | \$21,600.00 |
| Filing Fee | \$100.00 |
| TOTAL | \$25,300.00 |

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: February 18, 2022

Residential Tenancy Branch