Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City2City Real Estate Services Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, MNSD, MNETC, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages or compensation pursuant section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38;
- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both the tenants attended the hearing. The tenant VS spoke on behalf of the tenants and the landlord was represented by property manager, OL ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the Notice of Dispute Resolution Proceedings and evidence for this hearing, but stated he only received it last week.

The tenant testified that the hearing was originally scheduled to be heard at 1:30 p.m. on today's date and she sent the Notice of Dispute Resolution Proceedings regarding that hearing to the landlord via registered mail to the landlord's address listed on her tenancy agreement on September 11, 2021. The tracking number for the first mailing is recorded on the cover page of this decision.

The parties agreed that the delivery confirmation could be accessed from the Canada Post website during the hearing. According to Canada Post's website, a notice card was left at the landlord's address on September 14, 2021 at 9:40 a.m. A final notice to pick up the registered mail was left at the landlord's address on September 20, 2021 at 9:20

a.m. Based on this evidence, I deem the landlord served with the Notice of Dispute Resolution Proceedings package, which includes the tenant's evidence, on September 16, 2021, five days after it was sent by registered mail, pursuant to sections 89 and 90 of the *Act*.

The landlord acknowledges he received the second Notice of Dispute Resolution Proceedings for the hearing taking place at 9:30 a.m. on today's date, together with the tenant's evidence package some time last week.

Issue(s) to be Decided

Is the tenant entitled to additional compensation for a security deposit not returned in accordance with the *Act*?
Is the tenant entitled to compensation related to a notice to end tenancy for landlord's use?
Can the tenant recover the filing fee?

Background and Evidence

The tenant provided a copy of the tenancy agreement as evidence. The tenancy began on June 01, 2019, with rent set at $2,000.00 per month payable on the first day of each month. A security deposit of $1,000.00 was collected from the tenant at the commencement of the tenancy. The property management company as listed on the cover page of this decision is named as the landlord on the tenancy agreement.

The tenant gave the following testimony. She remembers a condition inspection report was done at the commencement of the tenancy, but the landlord never gave her a copy of it. At no time during the first month of the tenancy or any time thereafter did the landlord send a copy of the condition inspection report to her.

The landlord served her with a 2 Month Notice to End Tenancy for Landlord's Use ("Notice") around March 11, 2021. A copy of the notice was provided as evidence. The property management company, as named on the tenancy agreement, is listed as the landlord on this document. The tenants were able to find other accommodations and so gave the landlord 10 days notice that they would vacate the rental unit before the 2 months was up. The tenants gave notice to end the tenancy for April 2, 2021, and a condition inspection report was scheduled for that date.

On April 2nd, the landlord did not bring the original condition inspection report done with the tenants at the commencement of the tenancy. The only document that was brought for the tenants to sign was a form, printed on the landlord's letterhead, called "**Security**

Deposit Refund Form". On this document, dated and signed by both the tenants on April 02, 2021, the tenants provide their forwarding address and acknowledge the security deposit of $1,000.00.

The form states: total amount to be Refunded: $_____.

The form also states:
The tenant(s) and the landlord hereby agree the above total amount to be refunded. There is no spot for the landlord to sign on the form. Both tenants signed it.

The tenant testified that the landlord told them there were broken light bulbs and a drain repair that had to be made and they were given the ability to return to do those things and the landlord agreed the full amount would be returned. No documentation came from the landlord advising they intended on retaining any part of the security deposit.

On April 22, 2021, the tenants received $770.00 of the original $1,000.00 security deposit. No documentation came from the landlord advising why they retained any part of the security deposit. The tenants testified that they deposited the $770.00 cheque.

The tenant testified that the rental unit was listed for sale on April 30, 2021. A copy of the listing was provided as evidence. The tenant cannot determine whether it was sold because she does not have access to the database but submits that the listing was taken down shortly after it was listed.

The landlord gave the following testimony. A condition inspection report was done with the tenants and a copy was given to them at the commencement of the tenancy. The landlord does not have a copy of it with him for this hearing, but he believes from experience that when a tenant moves in or out of a rental unit, a copy is given to the tenant. He did not testify whether a copy was specifically provided to the tenants at the end of this tenancy as that information was not in front of him.

The landlord testified that on April 2nd the carpets were not cleaned to the property owner's liking. The property owner wasn't satisfied with the tenants using a rented carpet cleaning machine to clean the carpets and wanted to charge the tenants for a better job. There were light bulbs missing as well. The landlord charged the tenants for "*just the light bulbs and carpet cleaning, something like that",* testified the landlord.

The landlord testified that he doesn't know if the carpet cleaning and light bulb issues were stated on the condition inspection report, since he doesn't have it in front of him

and no copy of a condition inspection report was provided for the hearing. The landlord testified that the cheque in the amount of $770.00 was ready before April 15th and he thinks it was sent on that date by regular mail. The reason he "thinks" it was sent on April 15th is because his property management company never sends it late. The landlord confirmed he did not have written authorization from the tenants or an order from the Residential Tenancy Branch allowing him to retain any part of the security deposit.

The landlord acknowledges that the "**Security Deposit Refund Form"** is deficient in the way it is drafted as it does not provide a spot for the landlord to sign and does not clearly state how much the parties agree will be returned to the tenant. The landlord stated that he understood that this form was simply a place for the tenants to note their forwarding address and for the tenants to "request" their security deposit back.

Lastly, the landlord testified that the landlord named on both the tenancy agreement and the notice to end tenancy is his property management company. The landlord argued that his company is a representative of the landlord but acknowledged that nowhere in the documentation does the landlord identify who the client is. When I asked how the named property manager company or its spouse can occupy the rental unit, the landlord testified that it's not possible.

The landlord testified that he doesn't know if his client or his client's spouse ever occupied the rental unit. He does not have that information before him. The landlord argued that he told the tenants before they moved out that the owner may sell the property.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Return of security deposit and pet damage deposit

> **38** (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a)the date the tenancy ends, and
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> (b)the date the landlord receives the tenant's forwarding address in writing,
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> 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.

(4)A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a)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, or

(b)after the end of the tenancy, the director orders that the landlord may retain the amount.

(6)If a landlord does not comply with subsection (1), the landlord

(a)may not make a claim against the security deposit or any pet damage deposit, and

(b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the landlord clearly indicated that he did not have an agreement in writing from the tenants that he could retain all or part of the security deposit. Moreover, the document, "**Security Deposit Refund Form"**, printed on the landlord's letterhead, specifies that no deductions were made from the tenants' security deposit. Detrimental to the landlord's position is the fact that the form states the landlord agrees that the "above" total amount be refunded – with the only "amount" listed on the form is the $1,000.00 as the security deposit. Curiously, the form excludes a spot for the landlord to sign; leaving it to the imagination whether the form is a blanket agreement that the tenant could write in whatever amount they wished as the "total amount to be refunded".

Likewise, the landlord testified that there was no order from the director of the Residential Tenancy Branch that allows him to retain any amount of the tenants' security deposit.

The landlord received the tenants' forwarding address on April 02, 2021, as evidenced by the security deposit refund form signed by both tenants. The landlord did not make an application for dispute resolution claiming against the security deposit or return the tenants' security deposit IN FULL within 15 days as required by section 38(1) of the *Act*.

Pursuant to section 38(6), for the landlord's failure to comply with the above requirement, the landlord is statutorily required to pay the tenants double the amount of the security deposit [$1,000.00 x 2 = $2,000.00]. The landlord is ordered to pay this amount to the tenants.

Residential Tenancy Branch Policy Guideline PG-17 [Security Deposit and Set Off] at section C-5 describes what happens when a landlord holds back a portion of a security deposit without the tenant's written permission and without an order from the Residential Tenancy Branch:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

• Example A:

A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held. The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

The tenants acknowledge they have received $770.00 of the security deposit back. The tenants are therefore awarded $1,230.00 as compensation pursuant to section 38 (6) of the *Act*.

- Tenants' claim related to landlord's notice to end tenancy for landlord's use

Tenant's compensation: section 49 notice

51 (2)Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

(a)the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

> (b)the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, the landlord clearly identified his company, a property management company, as the landlord in both the tenancy agreement and the 2 Month Notice to End Tenancy for Landlord's Use. As a property management company, they never had any intention of occupying the rental unit and that the company couldn't possibly have a "spouse" that could theoretically occupy it for any period.

Additionally, the landlord testified that they represent the owner of the rental unit. The landlord stated during the hearing that they have no knowledge about whether their client ever occupied the rental unit after ending the tenancy with the tenants. Also during the hearing, the landlord did not identify who their client was, making it impossible for me to find an extenuating circumstance that could potentially excuse the landlord from being required to compensate the tenant. Even more compelling is the landlord's testimony that he or someone in his company told the tenants that the owner of the property was planning on selling the unit before the tenancy ended.

The stated purpose for ending the tenancy was for the landlord (the property management company) or the landlord's spouse to occupy the rental unit. Clearly, the property management company did not occupy the unit after the tenants vacated it. The landlord did not present any argument to say their client ever occupied it or had an extenuating circumstance preventing the client from occupying it. The tenant provided testimony, corroborated by a real estate listing to overwhelmingly satisfy me the landlord did not accomplish the stated purpose of occupying it or that they used the rental unit for that stated purpose for at least 6 months' duration.

For this reason, the tenants are entitled to compensation equal to twelve times the monthly rent payable under the tenancy agreement [$2,000.00 x 12 = $24,000.00]. I award the tenants $24,000.00 pursuant to section 51(2) of the *Act*.

As the tenant's application was successful, the tenant is also entitled to recovery of the $100.00 filing fee for the cost of this application.

Item	**amount**
Security deposit, doubled, minus amount paid	$1,230.00
12 months compensation pursuant to section 51(2)	$24,000.00

Filing fee	$100.00
Total	**$25,330.00**

Conclusion

I issue a monetary order in the tenants' favour in the amount of $25,330.00.

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: March 09, 2022

Residential Tenancy Branch