



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNSD, MNRT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") 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;
- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38;
- a monetary order for the cost of emergency repairs, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The male landlord ("landlord") and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 61 minutes.

The hearing began at 1:30 p.m. with me and the landlord present. The two tenants called in late at 1:36 p.m. The hearing ended at 2:31 p.m. I did not discuss any evidence with the landlord in the absence of the tenants.

The landlord confirmed that he had permission to represent the "female landlord," who is his wife, at this hearing (collectively "landlords").

The landlord and the two tenants confirmed their names and spelling. The landlord provided a mailing address, and the tenant provided an email address for me to send this decision to both parties after the hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure*. The landlord and the two tenants all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties affirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The landlord confirmed receipt of the tenants’ application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants’ application.

The landlord stated that he served a copy of the landlords’ evidence package, which includes photographs and text messages, to the tenants on April 11, 2022, by way of email. He then claimed that it was on April 12, 2022. He initially indicated that he sent the email to the tenant’s email address ending in “.com.” When the tenant stated that her email ends in “.ca,” the landlord changed his testimony to state that he sent it to “.ca” not “.com.” The landlord stated that he did not provide a copy of his email as evidence for this hearing. The tenant stated that the tenants did not receive the landlords’ evidence. She said that the tenants only received a written email asking to settle this application outside of the RTB, from the landlord.

I informed the landlord that I could not consider the landlords’ evidence at this hearing or in my decision because the tenants did not receive it, the landlord provided inconsistent testimony regarding service, and the landlords did not provide a copy of the email as proof of service for this hearing. The landlord confirmed his understanding of same and confirmed that he still wanted to proceed with this hearing.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property?

Are the tenants entitled to a return of double the amount of their security deposit?

Are the tenants entitled to a monetary order for the cost of emergency repairs?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on October 1, 2018. Monthly rent in the amount of \$2,260.00 was payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenants and the landlords continue to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were not completed for this tenancy. The landlords did not file an application for dispute resolution to retain any amount from the tenants' security deposit. The landlords did not have written permission to retain any amount from the tenants' security deposit.

Both parties agreed that the tenants vacated the rental unit pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 25, 2021, effective on September 30, 2021 ("2 Month Notice"). The tenants provided a copy of this notice for this hearing. Both parties agreed that the landlords served the 2 Month Notice to the tenants, for the following reason:

- *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.*

Both parties agreed that the tenants did not receive one months' rent compensation from the landlords, pursuant to the 2 Month Notice and section 51 of the *Act*.

The tenants seek one month's rent compensation, pursuant to the 2 Month Notice and section 51 of the *Act*. The tenants initially applied for one month rent compensation of \$2,255.00 because they said that was the amount of rent that was due after the rent increase by the landlords.

Both parties agreed that the tenants actually paid rent of \$2,260.00 after the rent increase to the landlords and this was the amount of rent at the end of this tenancy. Therefore, pursuant to section 64(3)(c) of the *Act*, I have amended the tenants' application to increase their monetary claim for one month's rent compensation, from \$2,255.00 to \$2,260.00, to reflect the monthly rent at the end of this tenancy, as per both parties' testimony. I find no prejudice to either party in making this amendment.

The tenants also seek a return of double the amount of their security deposit totalling \$2,200.00, \$92.80 for emergency repairs to their kitchen faucet, and the \$100.00 application filing fee.

The tenant testified regarding the following facts. This tenancy ended on August 31, 2021, when the tenants moved out and took all of their belongings. The tenants could not return the keys to the landlord until September 14, 2021, because the landlord was out of the country. The tenants provided 10 days' written notice on a letter, dated August 21, 2021, to move out on August 31, 2021, which is earlier than the effective date on the 2 Month Notice of September 30, 2021. This notice also included the tenants' forwarding address. The tenants provided the above notice to the landlord by email on August 21, 2021, since the landlord was out of the country. The tenants sent text messages to the landlord alerting him to the above email, the landlord responded to the tenants' text messages, and the tenants re-sent the email to the landlord. The tenants seek \$92.80 for emergency repairs to the kitchen faucet at the rental unit, for which they provided an invoice and receipt for this hearing. The landlord told the tenants to get the repairs done, the landlord's son was going to deal with it but stopped communicating with the tenants after the 2 Month Notice was served, and the tenants paid for the repairs and want their money back. The tenants paid \$2,000.00 instead of \$2,260.00 for rent in August 2021, so they only deducted \$260.00 from their rent to account for the above repairs, which cost \$352.80 total, leaving a balance of \$92.80 owed to the tenants by the landlords.

The landlord testified regarding the following facts. He agrees to reimburse the tenants \$92.80 for the emergency repairs to the kitchen faucet because the tenants are entitled to it. He agrees to return the tenants' security deposit of \$1,100.00, but not double the value of \$2,200.00. He agrees to return the tenants' rent as per the 2 Month Notice, but he does not agree to a full month of rent. He believes that the tenants are only entitled to the return of 16 days' rent from September 14 to 30, 2021, since their tenancy ended on September 14, 2021, the date they returned the keys to the landlord. He did not have proper internet access because he was out of the country, so he was unable to check his emails when the tenants provided their 10 days' written notice by email, with

their forwarding address and the move-out date. He may have received the tenants' email in his "junk mail" folder but he does not know because he has not checked his emails. He called the tenants on the telephone and they told him they were moving out of the rental unit.

Analysis

1 Month Rent Compensation

Section 51 of the *Act* entitles tenants to compensation of one month's free rent pursuant to a 2 Month Notice. It states in part:

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 50 of the *Act* states the following with respect to ending the tenancy earlier than the effective date on the 2 Month Notice:

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 find that this tenancy ended on August 31, 2021, when the tenants moved out and removed all of their belongings from the rental unit. Although the tenants did not return the keys to the rental unit to the landlord until September 14, 2021, the landlord agreed that it was because he was out of the country, so the tenants were unable to return the keys to him until that time. Therefore, this tenancy did not end on September 14, 2021.

I accept the tenants' evidence that they provided 10 days' written notice on August 21, 2021, to move out on August 31, 2021, earlier than the effective date on the notice of September 30, 2021, as per section 50 of the *Act* above.

I find that both parties communicated by email throughout this tenancy. Both parties agreed that the landlord provided his email address to the tenants to deal with any tenancy-related issues, particularly when he was out of the country. The landlord agreed that he called the tenants about the above issue and the tenants provided text messages from both parties about their email notice.

Therefore, even if the landlord did not check his email due to internet issues while he was out of the country, he provided it as a service method to the tenants, and he is deemed received with the tenants' 10 days' written notice, as per section 88 of the *Act* and section 43 of the *Regulation*.

It is undisputed that the tenants received a 2 Month Notice from the landlords and ended their tenancy pursuant to this notice. It is also undisputed that the landlords did not provide the tenants with one month's rent compensation pursuant to the 2 Month Notice.

It is undisputed that the tenants paid rent to the landlords for the last month of tenancy in August 2021, so I find that they are entitled to a refund for that month from the landlords. Although the tenants paid \$2,000.00 towards August 2021 rent, they deducted \$260.00 for the emergency repair that they paid for, and as permitted by the landlords. Therefore, the tenants are entitled to the value of a full month's rent for August 2021.

Accordingly, I find that the tenants are entitled to one month's rent compensation of \$2,260.00, as per section 51 of the *Act* and the 2 Month Notice. The tenants are provided with a monetary order for same.

Security Deposit

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants'

written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities, I make the following findings. As noted above, this tenancy ended on August 31, 2021. Also noted above, I find that the tenants provided a written forwarding address to the landlords, by way of the tenants' 10 days' written notice sent by email on August 21, 2021, and deemed received by the landlords, as per section 88 of the *Act* and section 43 of the *Regulation*. The tenants did not give the landlords written permission to retain any amount from their deposit. The landlords did not return the deposit or make an application for dispute resolution to claim against it at the RTB. The landlords' right to claim against the deposit for damages was extinguished for failure to complete move-in and move-out condition inspection reports for this tenancy, as required by sections 24 and 36 of the *Act*.

The landlords continue to hold the tenants' entire security deposit of \$1,100.00. No interest is payable on the deposit during the period of this tenancy. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$1,100.00, totalling \$2,200.00. The tenants are provided with a monetary order for same.

Monetary Order for Emergency Repairs and Filing Fee

During this hearing, the landlord agreed to pay the tenants \$92.80 for the cost of emergency repairs to their kitchen faucet. The tenants are provided with a monetary order for same.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlords. The tenants are provided with a monetary order for same.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$4,652.80 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: April 21, 2022

Residential Tenancy Branch