



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNETC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for the return of her security deposit pursuant to ss. 38 and 67;
- An order for compensation equivalent to 12 times monthly rent pursuant to s. 51;
and
- Return of her filing fee pursuant to s. 72.

D.M. appeared as the Tenant. S.K. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that she served the Landlord with her application and evidence by way of registered mail but could not recall the specific dated. The Landlord acknowledged receipt of the Tenant’s application materials and raised no objections with respect to service. I find that pursuant to s. 71(2) of the *Act* the Landlord was sufficiently served with the Tenant’s application materials as acknowledged by her at the hearing.

The Landlord advised that she did not serve evidence in response to the Tenant’s application.

Issues to be Decided

- 1) Is the Tenant entitled to the return of her security deposit?
- 2) Is the Tenant entitled to compensation equivalent to 12 times monthly rent?
- 3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the former tenancy:

- The Tenant took occupancy of the rental unit on November 14, 2020.
- The Landlord obtained vacant possession of the rental unit on August 2, 2021.
- Rent in the amount of \$1,300.00 was due on the last day of each month.
- The Tenant paid a security deposit of \$650.00 to the Landlord at the beginning of the tenancy.

No copy of the written tenancy agreement was provided to me. The Tenant's evidence includes a blank copy of the Residential Tenancy Branch's standard form tenancy agreement.

The Landlord advised that the rental unit was a basement suite within a single-family home. The Landlord further advised that there was another rental unit on the main floor of the residential property and that she did not live there. The Tenant indicates that she lived at the rental unit with a co-tenant, J.K., who was her partner at the time.

There was some dispute with respect to the circumstances at the end of the tenancy, in particular whether the Landlord unilaterally took possession of the rental unit. This dispute is not relevant to the present application as I am satisfied that the tenancy ended on August 2, 2021 as confirmed by the parties at the hearing.

The Landlord acknowledges serving the Tenant with a Two-Month Notice to End Tenancy signed on July 7, 2021 (the "Two-Month Notice"). The Two-Month Notice indicates that it was being issued so that the Landlord's child or spouse could occupy the rental unit.

The Landlord advised that the Tenant had filed an application to cancel the Two-Month Notice and provided the file number. The Tenant confirmed the file number provided by the Landlord was correct. I have reviewed the file and the matter came on for hearing on November 18, 2021. It was dismissed on the basis that the Tenant had already vacated the rental unit, thus making the claim to cancel the Two-Month Notice moot.

The Landlord testified that the plan was for her daughter to move into the rental unit. The Landlord indicates that the residential property management proved to be challenging for her as the property was managed by her husband, who passed away some two years ago. She indicated that her daughter was to purchase the residential property from her.

The Landlord admitted that the residential property was not occupied by her daughter as had been originally planned. The Landlord tells me that her daughter had applied for financing to purchase the property but was rejected based on her income as she was on maternity leave at the time. The Landlord advises that the residential property was listed and sold sometime in mid-September 2021. The Tenant says a family friend of hers purchased the property from the Landlord.

The Landlord argued that the Tenant's claim for compensation was improper as the Tenant had accepted the end of the tenancy and moved out of the property, some month and a half prior to the effective date of the Two-Month Notice. She argued that there was a mutual understanding the tenancy would end. The Landlord confirmed that the Tenant received a month's rent free pursuant to the Two-Month Notice prior to her vacating the rental unit.

The Tenant argued that there were issues with the property, namely mould, that went unaddressed, and that the Landlord issued the Two-Month Notice due to these issues. The Landlord denies this was a factor in issuing the Two-Month Notice.

The Tenant also seeks the return of her security deposit. The Tenant says that the Landlord unilaterally withheld \$300.00 from the security deposit.

The Landlord confirmed that she did withhold \$300.00 from the security deposit and says it was for carpet cleaning. The Landlord argued that the Tenant consented to the withholding of the \$300.00. I asked whether there was a receipt for this amount, the Landlord indicated that there was. As mentioned above, the Landlord provided no evidence in response to the Tenant's application.

I was directed to a condition inspection report, which was provided to me by the parties. It is in the standard form, indicates the move in inspection was conducted on November 9, 2020 and that the move-out inspection was conducted on August 1, 2021. The condition at move-in is listed as fair. There are no comments with respect to the state of

the rental unit at the end of the tenancy. At the bottom of the third page, there is a note that says “\$350.00 plus \$1,300.00 August rent as per end of tenancy agreement.”

The Tenant indicates that when she and her co-tenant attended the rental unit for the inspection, they were presented with the condition inspection report and were asked to sign it. She says they did not consent to the withholding of any of the security deposit and directed me to a notation “N/A” next to their signature. The Landlord denies that the Tenant signed the inspection report in protest. The Tenant also directs me to photographs from the listing for the property, which the Tenant argues shows that the carpets were not cleaned.

The Landlord says she received the Tenant’s forwarding address on August 3, 2021. The Tenant confirmed this was correct and the Tenant further advised that she provided a second forwarding address at the end of November 2021 as she and her partner, the former co-tenant at the rental unit, had separated and she moved into a new place.

Analysis

The Tenant applies for the compensation under s. 51 and for return of her security deposit.

Pursuant to s. 51(2) of the Act, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

In other words, the burden of proving that a compensation claim under s. 51(2) does not apply rests with the Landlord.

Policy Guideline #50 provides guidance with respect to compensation claims advanced under s. 51 of the Act. It states the following with respect to what is considered a reasonable period:

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must

have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Policy Guideline #50 further states that once a notice is issued under s. 49 the purpose stated in the notice must be accomplished and cannot be substituted for another purpose even if the separate purpose would have been valid grounds for ending a tenancy under s. 49.

Presently, the Landlord acknowledges issuing the Two-Month Notice. She further acknowledged that the Tenant was compensated for one month's rent as per the requirement under s. 51(1). It is further undisputed that the Tenant filed to dispute the Two-Month Notice but elected to instead vacate the rental unit, given vacant possession of the rental unit on August 2, 2021.

The Landlord argued that there was an agreement to vacate the rental unit and thus there is no compensation claim under s. 51(2). With respect that does not follow. The Tenant had every right to accept the end of the tenancy and vacate the rental unit after the Two-Month Notice was served on her. The fact that she filed to dispute the Two-Month Notice is irrelevant to the analysis. The Landlord admits to serving the Two-Month Notice. She cannot resile from that after it had been served and after the Tenant vacated the rental unit rather than to continue her claim to dispute the notice. The Two-Month Notice is valid and was not cancelled. The Tenant accepted the end of the tenancy pursuant to it.

The wording in the Two-Month Notice is clear: it was issued on the basis that the Landlord's child or spouse would occupy the rental unit. In this case, her daughter was to reside within the rental unit. That did not occur and the Landlord freely admits that the property was sold mid-September 2021.

I do not consider the narrative that the Landlord's daughter was unable to obtain financing relevant to the Tenant's application. The Two-Month Notice was not issued on the basis that the conditions of a sale have been satisfied and the purchaser asked the landlord for vacant possession. It was issued on the simple occupation of the rental unit by the Landlord's daughter. That did not occur and the fact that the daughter could not obtain financing for the purchase of the property cannot be said to have prevented the daughter from occupying the rental unit. It may have prevented its purchase by her, not her occupation of the rental unit.

I find that the Landlord has failed to establish that the stated purpose in the Two-Month Notice, being the rental unit's occupation by her daughter, was fulfilled at all. Indeed, the Landlord admits that the property was sold rather than occupied.

Section 51(3) of the *Act* permits a Landlord to avoid liability under s. 51(2) if there are extenuating circumstances present preventing a landlord from accomplishing the purpose stated within the Two-Month Notice within a reasonable period and for at least 6 months. Policy Guideline #50 includes as examples the death of the family member that was to occupy the rental unit or the destruction of the rental unit by a wildfire.

The Landlord did not argue the application of s. 51(3) and based on the evidence provided by the parties, such extenuating circumstances are not present. As mentioned above, the daughter's denial of financing may have prevented her from purchasing the property, but it did not prevent her from occupying it. It is not an extenuating circumstance within the meaning of s. 51(3) of the *Act*.

Accordingly, I find that the Tenant is entitled to compensation under s. 51(2) of the *Act* in the amount of \$15,600 (\$1,300.00 x 12).

The Tenant also seeks the return of her security deposit. Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A

landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

The Landlord says that she had the consent of the Tenant to withhold \$300.00 from the security deposit. Section 38(4)(a) of the *Act* permits a landlord to retain an amount from the security deposit if at the end of the tenancy the tenant and landlord agree in writing to the landlord withhold that amount.

I have reviewed the move-out inspection report and have considered the parties submissions. It is not clear to me that there was consent from the Tenant for the Landlord to withhold \$300.00 from the security deposit. There is a clear notation beside the Tenant's signature saying "N/A". Though this is not the proper method of indicating one does not agree to condition inspection report, I accept that it was the tenants' attempt to show that they did not agree to the Landlord withholding the funds.

Further, I am somewhat dubious of the Landlord withholding \$300.00 for the carpet cleaning. The Landlord provides no receipt for the carpet cleaning and the amount is a round figure that was apparently imposed on August 1, 2021, the day the inspection report was conducted. I was not advised that the tenancy agreement included a clause imposing liquidated damages for failing to clean the carpets, nor would such a clause be necessarily enforceable if it were found to be a penalty clause.

I find that the Landlord wrongfully withheld \$300.00 from the security deposit at the end of the tenancy as the Tenant did not consent to the Landlord doing so. Further, the Landlord provided no evidence in the form of a receipt to support that the cost was incurred or that the tenancy agreement had a liquidated damages clause.

The Landlord did not return the security deposit or claim against it within 15-days of receiving the forwarding address on August 3, 2021 as required under s. 38(1) of the *Act*. I note that the Tenant did not claim for double her security deposit under s. 38(6) of the *Act*. Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. I find that by failing to claim under s. 38(6), the Tenant waived her claim for its application and double the security deposit. Accordingly, I order that the Landlord return the \$300.00 unilaterally withheld.

Conclusion

The Tenant is entitled to compensation equivalent to 12 times monthly rent under s. 51(2) of the *Act*, which in this case totals \$15,600.00 (\$1,300.00 x 12).

The Landlord unilaterally withheld \$300.00 from the security deposit in contravention of s. 38 of the *Act*. The Tenant waived the application of s. 38(6). Therefore, I order that the Landlord return the balance of the security deposit to the Tenant in the amount of \$300.00.

The Tenant was successful in her application. I find that she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's \$100.00 filing fee.

I make a total monetary order as follows:

Item	Amount
Compensation under s. 51(2)	\$15,600.00
Balance of the security deposit under s. 38	\$300.00
Tenant's Filing fee under s. 72(1)	\$100.00
Total	\$16,000.00

Pursuant to ss. 51, 38, 67, and 72 of the *Act*, I order that the Landlord pay **\$16,000.00** to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with 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: June 28, 2022

Residential Tenancy Branch