



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNETC, 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 for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenants attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

The tenants testified that they served the landlord with the notice of hearing and evidence by registered mail sent on April 28, 2022. The tenants submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenants' materials on May 3, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

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

Are the tenants entitled to recover their deposit 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.

This periodic tenancy began on December 1, 2020 and ended March 3, 2022. The monthly rent was \$1,200.00 payable on the first of each month. A security deposit of \$600.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenants were served with a Notice to End Tenancy for Landlord's Use dated January 31, 2022 with an effective date of March 31, 2022. 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, specifically the child of the landlord or landlord's spouse.

The tenants gave written notice to the landlord to end the tenancy pursuant to section 50(1) of the Act on February 21, 2022 and vacated the rental unit on March 3, 2022.

After vacating the rental unit the tenants discovered the rental property being advertised for sale online. A copy of the online listing was submitted into evidence and it indicates that the listing was created on March 9, 2022.

The tenants gave their forwarding address to the landlord by a letter dated March 14, 2022. The tenants did not authorize any deductions from the security deposit for this tenancy. As at the date of the hearing the landlord has not returned the full amount of the deposit nor are the tenants aware of the landlord filing an application for authorization to retain the deposit.

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 tenants' evidence that they provided their forwarding address to the landlord on March 14, 2021. I accept the evidence that the landlord has not returned any amount of the \$600.00 security deposit for this tenancy. I accept that the tenants have not provided written authorization that the landlord may retain any portion of the deposit.

Furthermore, I accept the evidence that no condition inspection report was prepared at any time during the 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 evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within 15 days of receiving the tenant's forwarding address. 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 landlord's 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 tenants are entitled to an \$1,200.00 Monetary Order, double the value of the \$600.00 security deposit withheld by the landlord.

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(2) of the *Act* states that a landlord, or the purchaser of a property, must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if a tenant receives a notice to end tenancy for landlord's use of property and:

- (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,

The Landlord's Notice to End Tenancy for Landlord's Use, dated January 31, 2022 provides that the rental unit will be occupied by the landlord or a close family member. The tenants gave undisputed evidence that the tenancy ended in accordance with the Notice and section 50(1) of the Act on March 3, 2022. Shortly, thereafter the rental property online advertisements listing the property for sale were published. Based on the evidence I find that the rental unit was not used for the stated purpose provided on the Notice.

I find, based on the evidence, that the landlord did not use the rental unit for the purpose stated on the Notice to End Tenancy within a reasonable time or at all and instead has placed the property on the market to sell. I find no evidence of any extenuating circumstances that would excuse the landlord from paying an amount equivalent to 12 months' rent in accordance with section 51(2) of the Act.

Consequently, I find that the tenants are entitled to a monetary award of \$14,400.00, the equivalent of 12 times the monthly rent for this tenancy.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$15,700.00. 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: June 3, 2022

Residential Tenancy Branch