



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNETC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant March 14, 2022 (the “Application”). The Tenant applied as follows:

- For return of the security deposit
- For compensation because the Landlords ended the tenancy and have not complied with the Act or used the rental unit for the stated purpose

The Tenant appeared at the hearing late. J.D. appeared at the hearing for the Landlords. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

J.D. provided the correct rental unit address which is noted on the front page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

J.D. confirmed receipt of the hearing package and confirmed there were no issues with service of this. J.D. testified that the Landlords did not receive evidence from the Tenant. The Tenant testified that they served their evidence on the Landlords by registered mail and email. I heard the parties further on service issues and made a decision about service during the hearing. However, after hearing from the parties, I prefer the testimony of the Tenant over the testimony of J.D. in relation to service of the Tenant’s evidence. There were a few times during the hearing when J.D. said they did

not receive documents and then upon further questioning acknowledged they did in fact receive the documents. I do not find J.D.'s testimony about what they did or did not receive reliable or credible. Given this, I accept that the Tenant's evidence was served on the Landlords and admit the Tenant's evidence.

The Tenant confirmed receipt of the Landlords' evidence. Although the Tenant raised an issue with the timing of service, the Tenant did not know when they received the evidence and was incorrect about the evidence deadlines. Further, the Tenant acknowledged reviewing the Landlords' evidence and therefore I admit the Landlords' evidence.

I note that the Landlords submitted previous RTB decisions between the parties. The parties confirmed there have not been previous RTB decisions dealing with the two issues raised in the Application.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of the security deposit?
2. Is the Tenant entitled to compensation because the Landlords ended the tenancy and have not complied with the Act or used the rental unit for the stated purpose?

Background and Evidence

The parties agreed on the following. There was a verbal tenancy agreement between the parties. The tenancy started in October of 2012 and was a month-to-month tenancy. Rent at the end of the tenancy was \$1,500.00 due on the first day of each month.

Security deposit

The parties disagreed about whether the Tenant paid a security deposit. J.D. testified that the Tenant did not pay a security deposit. The Tenant testified that they did pay a \$675.00 security deposit and submitted a receipt showing this. J.D. testified that the

signature on the receipt provided is not either of the Landlords' signatures and pointed to the signature on the Two Month Notice to End Tenancy for Landlord's Use of Property dated March 16, 2021 (the "Notice") to support this.

The Tenant testified that the tenancy ended September 20, 2021. J.D. testified that the tenancy ended September 29, 2021.

The Tenant testified that their forwarding address was provided to the Landlords March 22, 2022, which is after the Application was filed and the hearing package was sent to the Tenant to serve on the Landlords. J.D. testified that the Landlords received the package March 29, 2022, and that the Tenant provided their forwarding address for the first time with the Application.

The Notice

The Tenant submitted a copy of the Notice. The parties agreed the Notice was served on the Tenant March 16, 2021. The effective date of the Notice was May 19, 2021. The grounds for the Notice are that the rental unit will be occupied by the Landlord or Landlord's spouse.

J.D. testified as follows in relation to the Notice. The Tenant moved out of the rental unit September 29, 2021. The entire rental unit had to be extensively renovated because it was not livable. Landlord B.P.'s son moved into the rental unit first, on December 06, 2021, as shown in the photos submitted. Landlord B.P. moved into the rental unit in the second week of January 2022. Landlord B.P. was renting elsewhere prior to moving into the rental unit and had to give two months notice. Landlord B.P. had to give notice twice at the place they were renting because the Tenant did not move out of the rental unit on the original date agreed upon. Landlord B.P. still lives in the rental unit.

The Landlords submitted the following relevant documentary evidence:

- Government identification for Landlord B.P.'s son showing a different address than the rental unit address. J.D. testified that Landlord B.P.'s son used their uncle's address as their address because the Tenant was checking the mail at the rental unit.
- Photos of inside the rental unit including of repairs done and to show Landlord B.P.'s son was living in the rental unit.

- Receipts and invoices for the renovations done in the rental unit.

The Tenant testified as follows. Landlord B.P. is not living at the rental unit and is still living at their previous address. Landlord B.P.'s vehicle is still parked outside their previous address. It may be that Landlord B.P.'s son, or whomever the person is, is living in the rental unit. The photos show nobody is residing in the rental unit. The Tenant left the rental unit in good condition; however, the house was not livable even when the Tenant was living there.

The Tenant submitted the following relevant documentary evidence:

- A receipt for a security deposit.
- The Notice.
- Photos of the outside of the rental unit.

Analysis

Security deposit

I accept that the Tenant paid a \$675.00 security deposit given the receipt in evidence. I acknowledge that the signature on the receipt is different than the signature on the Notice; however, I do not find this to be sufficient evidence that the Tenant has forged one of the Landlords' signatures and committed fraud. I note that this tenancy started in 2012 and it may be that the Landlords simply do not recall receiving the security deposit. I also find it unlikely that the Landlords rented the unit to the Tenant without requiring a security deposit.

Section 38(1) of the *Act* sets out the obligations of the Landlords in relation to the security deposit:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

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.

The Tenant was required to provide their forwarding address to the Landlords prior to filing for return of the security deposit because the Landlords have 15 days from receipt of the forwarding address to return it or file a claim against it. I do not find providing the forwarding address with the Application sufficient. I find section 38(1) of the *Act* was not yet triggered when the Tenant filed the Application, and the Tenant was not yet entitled to return of the security deposit. Further, the parties did not agree whether a security deposit had been paid and this decision is the first decision on this issue that the Landlords will receive. Given this, I dismiss the request for return of the security deposit with leave to re-apply.

The Landlords have 15 days from receipt of this decision to comply with section 38(1) of the *Residential Tenancy Act* (the "*Act*"). The Landlords should obtain and keep evidence of when they received this decision in case this becomes an issue between the parties.

If the Landlords do not comply with section 38(1) of the *Act*, the Tenant can re-apply for return of their security deposit.

The Notice

The Notice was issued pursuant to section 49(3) of the *Act* which states:

- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) and (3) of the *Act* state:

- (2) Subject to subsection (3), the landlord...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...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.

(3) The director may excuse the landlord...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

When a tenant applies for compensation pursuant to section 51(2) of the *Act*, it is the landlord who has the onus to prove they followed through with the stated purpose of the notice to end tenancy within a reasonable period after the effective date of the notice and used the rental unit for the stated purpose for at least six months. It is also the landlord who has the onus to prove extenuating circumstances pursuant to section 51(3) of the *Act*.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus of proof.

The parties have provided conflicting testimony about whether Landlord B.P. or their son moved into the rental unit as required. I did not find one party's testimony more reliable or credible than the other on this point. The Tenant provided a basis for their testimony disputing that Landlord B.P. moved into the rental unit, which is that the Tenant believes Landlord B.P. still lives at their previous residence. I find both versions

of events equally probable. Therefore, I have considered the documentary evidence submitted to support each position.

The Tenant submitted photos of the outside of the rental unit which I find support that the rental unit was extensively renovated and vacant after the Tenant moved out. One of the photos shows the date it was taken, being January 25, 2022, and is consistent with how the rental unit looks in all of the photos. I find the photos to be compelling evidence that the rental unit was extensively renovated and left vacant until at least January 25, 2022.

In contrast, the Landlords have not provided compelling evidence that Landlord B.P.'s son moved into the rental unit December 06, 2021, or that Landlord B.P. moved into the rental unit in the second week of January 2022. The only evidence to support the testimony that Landlord B.P.'s son, and then Landlord B.P., moved into the rental unit are undated photos of a few random items throughout the rental unit. I do not find the photos to be compelling evidence of anyone living in the rental unit because they are not of a fully inhabited house, or even of furniture, they are of random items here and there throughout the rental unit.

Further, I accept that extensive renovations were done to the rental unit after the Tenant moved out because the photos submitted by both parties show this and because J.D. acknowledged this. J.D. testified that the renovations were needed to make the rental unit livable, and the Tenant agreed with this. I find it unlikely that anyone lived in the rental unit while it was deemed unlivable and being extensively renovated.

As well, I find the lack of evidence in this matter notable. There is no evidence before me of the following. Evidence from Landlord B.P.'s son about moving into the rental unit. Evidence from Landlord B.P. about their son or them moving into the rental unit. No tenancy agreement showing Landlord B.P. previously rented a different residence. No notice ending Landlord B.P.'s previous tenancy. No mail addressed to Landlord B.P.'s son or Landlord B.P. at the rental unit. No government identification of Landlord B.P.'s son or Landlord B.P. showing the rental unit address as their residence. No utility bills for the rental unit in Landlord B.P.'s son's name or Landlord B.P.'s name showing they had utility accounts for the rental unit. No utility bills showing use and some evidence of the rental unit being inhabited. No photos of the rental unit with furniture in it. No receipts or invoices for moving trucks or supplies.

I find the Tenant has submitted compelling evidence that the rental unit was extensively renovated and left vacant until at least January 25, 2022. I find the Landlords have not submitted compelling evidence that Landlord B.P.'s son moved into the rental unit or Landlord B.P. moved into the rental unit. I find the Landlords have failed to meet their onus to prove the Landlords followed through with the stated purpose of the Notice.

I note that, even if I accepted that Landlord B.P.'s son or Landlord B.P. moved into the rental unit January 26, 2022, which I do not accept, this is not within a reasonable period after the effective date of the Notice which I consider to be September 29, 2021, as this is when the Tenant moved out. RTB Policy Guideline 50 states that a reasonable period is around 15 days (page 3). Almost four months is not reasonable.

J.D. testified that Landlord B.P. had to give two months notice to their own landlord after the Tenant moved out September 29, 2021. I do not accept this. It is not clear given the *Act* why Landlord B.P. would have to give two months notice. Further, there is no compelling evidence before me to support that Landlord B.P. was renting elsewhere or had to provide two months notice. As well, two months notice would have been for the end of November and does not explain why Landlord B.P. did not move into the rental unit as alleged for another month-and-a-half.

If Landlord B.P. is relying on the required extensive renovations as extenuating circumstances, these are not extenuating circumstances. The Landlords could have attended the rental unit prior to issuing the Notice to see whether it required renovations and, if so, how extensive these would be. I find it would have been clear to the Landlords that extensive renovations were required to the rental unit because the Tenant stated the rental unit was not livable when they were living there. If the Landlords failed to go and look at the rental unit prior to issuing the Notice, this is a lack of due diligence and not an extenuating circumstance because it was completely within their control to attend the rental unit and determine whether renovations were required (see RTB Policy Guideline 50, page 6 about extenuating circumstances).

Given the above, I find the Landlords must pay the Tenant 12 times the monthly rent pursuant to section 51(2) of the *Act* and that section 51(3) of the *Act* does not apply. Therefore, the Landlords must pay the Tenant \$18,000.00 and the Tenant is issued a Monetary Order in this amount.

Conclusion

The request for return of the security deposit is dismissed with leave to re-apply.

The request for compensation pursuant to section 51 of the *Act* is granted and the Tenant is issued a Monetary Order for \$18,000.00. This Order must be served on Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: December 06, 2022

Residential Tenancy Branch