



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with two separate applications filed by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

The parties agreed that the applications be amended to remove C.N. as a respondent.

Issues

Are the tenants entitled a monetary order for compensation for damage or loss?

Are the tenants entitled to a return of all or a portion of the security deposit, including double the amount?

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

Background and Evidence

The tenancy began on April 1, 2021, with a monthly rent of \$1350.00 payable on the 1st day of each month. The tenants paid a security deposit of \$675.00 at the start of the tenancy which the landlord continues to retain.

On February 13, 2022, the landlord sent the tenants an e-mail stating they would need to end the tenancy due to occupancy by a family member with an effective date of April 1, 2022. The tenants responded by requesting a formal Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") be issued with a full two months notice and not one and half months as per the e-mail notice.

On February 16, 2022, the landlord served the tenants with a formal Two Month Notice with an effective date of April 15, 2022. The date of issuance on the Notice was incorrect as it was dated April 15, 2022. The effective date was also incorrect as it should have had an effective date of April 30, 2022 as per the Act.

The tenants requested the landlord correct the effective date of the Notice. Both parties testified that there were multiple e-mail communication pertaining to correcting the date of the Two Month Notice although not all e-mails were submitted as evidence.

The tenants submit that they were left unsure as to the status of the tenancy due to the multiple incorrect dates and e-mail eviction attempt. The tenants began the search for new accommodation and on March 17, 2022 the tenants provided the landlord with their own 10 day notice to end tenancy early pursuant to section 50 of the Act.

The tenants vacated the rental unit on March 31, 2022. The tenants had paid rent for the full month of March 2022.

The tenants are claiming the equivalent of one month's rent as compensation for the Two Month Notice.

The tenants are also claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenants provided the forwarding address to the landlord in writing on March 17, 2022.

The landlord disputes the tenants claim for one-month free rent. On behalf of the landlord, R.A. submits that during the time in question the landlord was going through a lot including a death in the family. R.A. submits that although the tenants were initially served with a Two Month Notice, this Notice was later nullified by agreement of the parties. R.A. submits that the tenants provided their 10 day written notice two weeks after they agreed the Two Month Notice was null and void. The landlord submitted into evidence e-mail correspondence with the tenant dated February 16, 2022. R.A. submits

that this e-mail correspondence confirms the tenant returning the original Two Month Notice to the landlord and confirms the notice was null and void.

R.A. also referred to an e-mail submitted by the tenants dated February 17, 2022 in which they ask the landlord if they would be getting a second Two Month Notice with the corrected dates stating “they would like to know if they should start looking for alternate residence immediately, or not?” The landlord responded on February 27, 2022 stating “things have changed. We will continue as is, status quo.”

R.A. acknowledged that the landlord received the tenants forwarding address in writing and confirmed that the landlord has not returned the deposit or filed a claim against the deposit.

Analysis

Section 51 (1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord’s use of property is entitled to receive from the landlord an amount that is equivalent to one month’s rent payable under the tenancy agreement.

There was no dispute that the tenants received a formal Two Month Notice on February 16, 2022. There was also however no dispute that this Two Month Notice contained errors in both the effective date and the issuance date of the Notice. There is also no dispute that the tenants returned the original Two Month Notice to the landlord and no new Notice was issued by the landlord. Based on the above facts and e-mail correspondence submitted on file, I accept the submission of the landlord that the tenants knew and agreed to the Two Month Notice dated February 16, 2022 being null and void. This finding is supported by the tenants’ own e-mail on February 17, 2022 in which they clearly ask the landlord if a replacement Notice was going to be issued so they would know if they need to be looking for a new residence immediately or not. The landlord responded that things had changed and they would continue as is, status quo. I find that given the previously e-mail correspondence by which the tenants returned the original Two Month Notice and the landlord asking them to clarify that notice as being null and void, it was clear that the landlord’s response as status quo meant the tenancy would be continuing. The tenants proceeded to issue their own 10 Day Notice, knowing a valid Two Month Notice was not in place.

Accordingly, I dismiss the tenants claim for one month’s rent compensation.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for

payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution.

Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I find the tenants did provide a forwarding address in writing to the landlord. The tenants security deposit was not refunded in full within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$1350.00, which is double the original security deposit of \$675.00.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1450.00.

Conclusion

I grant the tenants a Monetary Order in the amount of \$1450.00. 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: January 18, 2023

Residential Tenancy Branch