



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSD, FFT**

MNETC, FFT

Introduction

This hearing dealt with two applications filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38;
- Authorization to recover the filing fee from the other party pursuant to section 72;

And

- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. The landlord acknowledged service of both the tenant's Notice of Dispute Resolution Proceedings packages and the tenant acknowledged service of the landlord's evidence package. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit (doubled)?

Did the landlord have an extenuating circumstance preventing her from occupying the rental unit after the tenancy ended?

Can the tenant recover the filing fee or fees?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on September 15, 2019 with rent set at 1,650.00 per month payable on the first day of each month. A security deposit was collected at the commencement of the tenancy.

The parties agree that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use on January 8, 2022, effective March 31, 2022. A copy of the notice to end tenancy was provided and indicates the rental unit will be occupied by the landlord or the landlord's spouse.

The parties also agree that a condition inspection report was done at the beginning and end of the tenancy. On March 31st, when signing the condition inspection report, the tenant provided her forwarding address. The tenant was compensated with the equivalent of a months rent as no rent being paid for the month of March, 2022.

The tenant gave the following testimony. The landlord tried to make her sign a mutual agreement to end the tenancy but she refused to sign it. On March 17, 2022, the landlord contacted her to advise they no longer needed to move into the rental unit and asked if she wanted to stay. The tenant told the landlord that she will try to get out of the tenancy agreement she signed with a new landlord but that landlord told her it would mean a forfeit of her security deposit. The tenant proceeded to move out. The tenant discovered that the landlord had advertised the rental unit for rent \$300.00 to \$400.00 more than she was paying while the tenant was still occupying the unit. The tenant

acknowledged she was paying below market value for the rental unit at the end of the tenancy.

The tenant gave her forwarding address to the landlord on March 31st on the condition inspection report. On May 4th, 33 days after providing the forwarding address, she emailed the landlord about her security deposit. On May 9, the landlord responded saying she is keeping a portion of the deposit. The landlord returned \$1,000.00 of the tenant's security deposit. In her application, the tenant notes the landlord informed her she is deducting \$650.00 for the stove needing to be replaced.

The landlord gave the following testimony. She acknowledges getting the tenant's forwarding address on March 31st on the condition inspection report on move out. The landlord lost her job in April 2021, while pregnant. She was having difficulty living with her in-laws which forced her to consider moving out. The landlord didn't end the tenancy before the end of 2021 because she didn't want to evict the tenant at a bad time of the year. This is the landlord's first time being a landlord and this is her first tenant.

When the landlord's inlaws saw her and her husband packing to leave, they had a family meeting to resolve conflict. The landlord and her inlaws worked out their differences and the landlord changed her mind and decided to continue living with them. After telling the tenant she could stay on March 17th, she didn't hear back despite phone calls and texts. It wasn't until March 24th the tenant confirmed she is moving. The landlord couldn't continue to pay the mortgage on the rental unit while paying rent to the inlaws and so they marketed the unit on Facebook Marketplace and Craigslist.

The landlord testified she has been reasonable in only deducting \$650.00 from the tenant's security deposit. They had to replace the broken stove and her husband thinks they should have charged the tenant for the entire thing. The landlord acknowledges that she did not file an application for dispute resolution seeking to retain the tenant's security deposit within 15 days of the tenancy ending and being served with the tenant's forwarding address.

Analysis

- Compensation for not accomplishing the reason for ending the tenancy

A tenant may apply for an order for compensation if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the

notice to end tenancy, or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, pursuant to section 51(2) of the Act.

Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy] provides guidance to landlords and tenants in addressing issues with respect to section 51(2) of the Act. Part E deals with the extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.*
- *A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- *A tenant exercised their right of first refusal but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*

The following are probably not extenuating circumstances:

- ***A landlord ends a tenancy to occupy the rental unit and then changes their mind.***
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.*

(My emphasis added)

In this case, the parties agree that the landlord did not occupy the rental unit for a period of at least 6 months from when the tenancy ended. The landlord testified that she decided to remain living with her in-laws rather than move into the rental unit. Clearly, the stated purpose for ending the tenancy was not achieved.

Here, the potential extenuating circumstance suggested by the landlord for not moving in was because the living situation with her in-laws had changed when they saw her and her husband packing their belongings before leaving.

When questioned by the tenant, the landlord had no reasonable reason for not having a family meeting with her in-laws **before** deciding to end the tenancy with her tenant. In other words, it is possible the eviction could have been prevented if the landlord had made an earlier attempt at reconciling with her husband's family. I do not find there to be any circumstances that could not be anticipated or were beyond the landlord's control. I find that the landlord ended the tenancy to occupy the rental unit and changed their mind. This circumstance does not constitute an extenuating circumstance that would allow me to excuse the landlord from paying the compensation under section 51 of the Act. Consequently, the tenant is entitled to compensation of 12 months rent [$\$1,650.00 \times 12 = \$19,800.00$.]

- Return of security deposit (doubled)

Within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations/ or make an application for dispute resolution claiming against the security deposit or pet damage deposit, pursuant to section 38(1) of the Act.

I find that the tenancy ended on March 31, 2022 and that tenant provided her forwarding address in writing to the landlord on that date, on the move-out condition inspection report signed by both parties. I find that landlord has not returned the security deposit to the tenant within 15 days of receiving the forwarding address or made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant.

Accordingly, I find that landlord has failed to comply with her obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

If a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that she pay the tenant double the amount of the security

deposit [$\$1,600.00 \times 2 = \$3,200.00$]. After deducting the \$1,000.00 already returned to the tenant, the landlord is ordered to repay the tenant the remaining \$2,200.00.

As the tenant has been successful in her application, she is entitled to have the filing fee of \$100.00 repaid by the landlord. The second filing fee will not be recovered as the tenant could have amended the first application for dispute resolution to include the relief sought in the second application without paying an additional fee.

Item	Amount
12 months compensation	\$19,800.00
Security deposit (doubled)	\$2,200.00
Filing fee	\$100.00
Total	\$22,100.00

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$22,100.00.

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: February 28, 2023

Residential Tenancy Branch