



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSD, MNETC, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- For an order returning the security deposit pursuant to section 38 of the Act
- For an order for compensation as the tenancy ended pursuant to a two month notice to end tenancy and the landlord has not used the rental unit for the stated purpose pursuant to section 51 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

While the applicant tenant CY and advocate CL attended the hearing by way of conference call, the respondent landlord did not, although I waited until 1:40 pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 pm. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenants stated that they served the landlord with the dispute notice and supporting materials by way of registered mail on November 28, 2022. The tenants produced a Canada Post receipt and tracking number dated November 28, 2022. I find that the

landlord is deemed served on December 3, 2022 pursuant to sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

1. Are the tenants entitled to the return of the security deposit?
2. Are the tenants entitled to 12 months rent as compensation?
3. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on April 15, 2020. The rental unit is an entire townhouse. Rent was \$2,400.00 per month due on the first of the month. A security deposit of \$1,500.00 was paid and the landlord still holds the deposit in trust.

The tenants testified that they vacated the rental unit on August 14, 2022 as the result of receiving a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice"). The Two Month Notice was dated June 29, 2022 with an effective date of August 29, 2022. The tenants did not dispute the Two Month Notice. The Two Month Notice was produced in evidence and states that the effective date of the notice is September 14, 2022.

Security Deposit

The tenants stated that a move in condition inspection was conducted but they did not receive a copy of the report. The tenants testified further that a move out inspection was never completed. The tenants stated that they provided the landlord with their forwarding address on October 26, 2022. The tenants provided proof of service in evidence of the forwarding address served on the landlord by registered mail on October 26, 2022.

The tenants stated through their advocate that the landlord has not returned the security deposit and to their knowledge the landlord has not filed an application for dispute resolution.

12 Month Compensation

The tenants testified that the landlord has not utilized the rental unit for the purpose stated in the Two Month Notice. They provided three forms of evidence to establish that the landlord was re-renting the property:

1. Three photographs of different packages delivered to the rental unit delivered in September, 2022 that appear to be addressed to someone other than the landlord or the landlord's close family member.
2. Three online advertisements for the rental unit posted in August and September, 2022. The advertisements were in a language other than English and the tenant CY translated them during the hearing. Two of the advertisements were listing separate floors of the rental unit for rent, and the third ad purported to advertise the entire property. The tenant CY confirmed that the pictures shown in the advertisement were pictures of the rental unit.
3. A series of text messages that the tenants stated were between the tenants' friend and the landlord. These texts were also translated by the tenant CY and were a series of back and forth communications between the landlord and the tenants' friend. The tenants' friend was inquiring in response to the advertisements about whether the rental unit was still available. The tenant's friend was told that the second floor of the rental unit was available, up until August 26, 2022. On that date the tenant CY translated the text messages. The messages said the second floor of the rental unit was available, and then was no longer available a short time later. Some of these texts were inquiries by the landlord to the prospective tenant about their suitability to share some amenities in the home with her son.

The tenants' position is that the landlord did not use the rental unit for the purpose stated in the Two Month Notice which was that a close family member of the landlord would occupy the residence.

Analysis

Security Deposit

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the "Regulations"). Further, section 38 of the Act

sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

The undisputed evidence before me is that the landlord extinguished their rights under section 24 of the Act in that they failed to provide the tenants with a copy of the move in condition inspection report.

Therefore, the landlord was required to return the tenants' security deposit pursuant to section 38 of the Act within 15 days of receiving the tenants' forwarding address. The other option for the landlord was to file a dispute application in respect of the security deposit. The undisputed evidence before me is that the landlord did not return the tenants' security deposit and did not file a dispute application in respect of the security deposit. I therefore find that section 38(1) of the Act was not satisfied, and the tenants are entitled to return of double the security deposit as required under section 38(6) of the Act.

12 Month Compensation

Section 51 of the Act allows the tenants to claim the equivalent of 12 months compensation from the landlord if they were served with a Two Month Notice and the landlord didn't use the rental unit for the reasons stated in the notice.

Additionally, RTB Policy Guideline 50 states in part:

Sections 51 and 51.4 of the RTA require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, did not use the rental unit for the stated purpose for at least 6 months duration. The director may only excuse a landlord from having to pay this further compensation if there were extenuating circumstances...

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

The landlord did not attend or provide the required evidence. Further, I accept the tenants' undisputed testimony that the unit was offered for re-rental as described during

the hearing. Therefore, I find that the tenants are entitled to twelve months of rent in compensation for not occupying the rental unit in accordance with the Two Month Notice.

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

Conclusion

The tenants' application is granted and the tenants are entitled to a monetary order as follows:

Relief Claimed	Amount
Return of security deposit (double)	\$3,000.00
Section 51 compensation	\$28,800.00
Filing Fee	\$100.00
Total	\$31,900.00

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 15, 2023

Residential Tenancy Branch