



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDC, MNETC, FF

Introduction

This hearing convened by teleconference on September 26, 2022, to deal with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for a monetary loss or other money owed, compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice), and recovery of the cost of the filing fee.

The tenant, tenant's agent/translator, and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

At the beginning of the hearing, the matter of service of evidence was addressed. Due to evidence issues, the hearing was adjourned. An Interim Decision was issued on September 26, 2022, which is incorporated by reference and should be read in conjunction with this Decision. In the Interim Decision, I ordered the hearing be adjourned and reconvened on the date and time contained in the attached Notice of Adjourned Hearing. The parties were advised that the hearing would continue with or without their presence.

At the reconvened hearing, the tenant and their agent/translator attended; however, the landlord did not attend.

At the reconvened hearing, the tenant through their translator was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the submissions and or arguments are reproduced here; further, only the evidence specifically referenced and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenant testified that they served their required evidence to the landlord after the first hearing, as required by the Interim Decision. The tenant said they have not received any evidence from the landlord for this dispute.

Based upon the tenant's undisputed documentary and oral evidence, which included a Canada Post tracking number showing service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package), the landlord's appearance at the first hearing on September 26, 2022, I find the tenant submitted sufficient evidence that they served the landlord with their application package and evidence as required.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act, a return of their security deposit, and recovery of the cost of the filing fee?

Background and Evidence

According to the tenant, the tenancy began on April 15, 2017 and ended on July 31, 2021, when they vacated the rental unit. The monthly rent at the end of the tenancy was \$1,500 and the tenant paid a security deposit of \$750, which has not been returned to the tenant.

The tenants' monetary claim consists of the following:

\$18,456 for the equivalent of 12 times the monthly rent payable under the tenancy agreement. However, the tenant agreed their monetary claim was inaccurate as the monthly rent was \$1,500, not \$1,538. I find it appropriate to amend the tenant's claim to \$18,000 (\$1,500 x 12 months).

The tenant also claimed \$750 for a return of their security deposit.

Therefore, the tenant's total monetary claim is \$18,750.

The tenant wrote in their application the following:

the owner of the house needs to live in the house that she rents to me and she gives me the wrong form, she gives me the correct form, and the house was sold she gave the form that she was going to live in the house

[Reproduced as written]

The 2 Month Notice was dated May 30, 2021, and listed an effective move-out date of July 31, 2021. The reason for ending the tenancy states that the rental unit will be occupied by the landlord or the landlord's spouse. A copy of the Notice was filed in evidence.

The tenant submitted the following explanation in evidence:

Just to let you know that the form you had me sign, Mutual Agreement to End the Tenancy #RTB-8, is the wrong one and is not the same as a Notice to End Tenancy.

As you ended the tenancy, and you are planning to use the property, another form must be used. Attached is the correct one, Two Month Notice to End Tenancy for Landlord's Use of Property.

On May 31, 2021, your husband came in person to meet with me to say that you were terminating the tenancy because you are planning to use the property and gave me two months notice to move out (end date effective July 31, 2021).

Also, he brought a filled-out form, the Mutual Agreement to End Tenancy, and I signed it without realizing that it was the wrong form. As you know, my English is not good, and I am not able to quickly read such a form.

I confirm that I will be moving out on July 31, 2021, by 6 p.m.

[Reproduced as written]

At the hearing, the tenant said the landlord acknowledged they had the tenant sign the wrong form as she does speak English very well and they immediately delivered the tenant a 2 Month Notice instead.

The tenant submitted that the home was sold within the 6 months of the effective date. The tenant said they drive by the home on their way to work and saw a for sale sign. The real estate history showed the home sold on December 8, 2021. The tenant submitted evidence of the real estate listing.

As to the security deposit issue, the tenant submitted that they provided their forwarding address to the landlord by text message and WhatsApp message. The message was originally sent on August 3, 2021, and a follow up message was sent on September 14, 2021, which received a response from the landlord. In an email to the tenant, the landlord apologized to the tenant for the delay and would return the security deposit. To date, the landlord has not returned their security deposit. The tenant filed a copy of the email.

The landlord failed to attend the reconvened hearing on the merits of the tenant's application and did not provide evidence to respond to the tenant's application or to support their 2 Month Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

As the landlord failed to attend the hearing, I consider the tenant's application unopposed.

The 2 Month Notice was given to the tenant listing that the landlord or landlord's spouse will occupy the rental unit.

Section 51(2) provides that if 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 if 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 must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

I find the tenant submitted sufficient evidence that they were served the 2 Month Notice on May 31, 2021, for an effective date of July 31, 2021, and that the rental unit was advertised for sale within the 6 months after the effective date. The tenant's evidence showed a real estate listing dated December 8, 2021. I therefore find that the rental unit has not been used for the stated purpose and as a result, I find the landlord must pay the tenant the amount of \$18,000, the equivalent of 12 times the monthly rent of \$1,500.

I further find that the Mutual Agreement given by the landlord to the tenant to sign was given under false pretenses, due to the tenant's lack of proficiency in the English language. This is further supported by the landlord immediately serving the 2 Month Notice to the tenant, for the same move-out date. I therefore find the Mutual Agreement is of no force or effect and that the 2 Month Notice overrides the impact of the Mutual Agreement.

Section 51(3) of the *Act* authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As the landlord failed to attend the hearing to present evidence of extenuating circumstances preventing them from using the rental unit for the stated purpose, I find there is insufficient evidence of extenuating circumstances.

As I have found the landlord must pay the tenant compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$1,500, and as I have found insufficient evidence of extenuating circumstances preventing the landlord or spouse from occupying the rental unit, I find the tenants have established a monetary claim of **\$18,000**.

As to the tenant's security deposit of \$750, section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the amount of the security deposit.

The tenancy ended on July 31, 2021, and the tenant provided evidence that their forwarding address in a text message and WhatsApp message on or about August 3, 2021, and September 14, 2021. The evidence shows that the parties regularly used these methods of communication and I therefore find the landlord was sufficiently served the tenant's forwarding address twice, with the latest delivery date of September 14, 2021.

The landlord did not appear in the reconvened hearing to provide any evidence in response to the tenant's claim. I therefore find that the tenant has established a claim for recovery of double the security, in the amount of **\$1,500**. To this claim, I add **\$2.56**, which is the interest rate on the unreturned security deposit.

I find merit with the tenants' application and award them recovery of their filing fee of **\$100**, pursuant to section 72(1) of the Act.

As a result, I grant the tenant a monetary order (Order) of **\$19,602.56**, comprised of \$18,000, the equivalent of 12 times the monthly rent of \$1,500, double the \$750 security deposit, or \$1,500, interest on the security deposit of \$2.56, and the filing fee of \$100.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is informed that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent in the amount of \$18,000, their security deposit of \$750, doubled to \$1,500, interest on the security deposit of \$2.56, and recovery of the filing fee is granted. The tenant has been granted a monetary order for **\$19,602.56**.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 03, 2023