



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant June 15, 2022 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- For return of the security deposit
- For reimbursement for the filing fee

The Tenant and Landlords appeared at the hearing. 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.

The Tenant submitted evidence prior to the hearing. The Landlords did not submit evidence. I addressed service of the hearing package and Tenant’s evidence. The Landlords confirmed receipt of the hearing package, including a copy of the Application. The Landlords testified that they did not receive the Tenant’s evidence; however, the Landlords agreed to the Tenant’s evidence being admitted and therefore it is.

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 compensation for monetary loss or other money owed?
2. Is the Tenant entitled to return of the security deposit?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The parties agreed rent was \$1,250.00 at the end of the tenancy. The Tenant paid a \$500.00 security deposit.

The parties agreed the Tenant moved out of the rental unit May 01, 2022.

Security deposit

The Tenant acknowledged they had not provided the Landlords with a forwarding address in writing. Pursuant to section 39 of the *Act*, the Tenant must provide the Landlords with a forwarding address in writing in order to receive the security deposit back. Further, section 38(1) of the *Act* in relation to what the Landlords must do with the security deposit is not triggered until the Tenant provides the Landlords with a forwarding address in writing.

The Tenant provided their forwarding address at the hearing and it is noted on the front page of this Decision.

The Landlords are considered to have received the Tenant's forwarding address in writing the day they receive this Decision. The Landlords should obtain evidence of the day they receive this Decision in case this becomes an issue. Once the Landlords receive this Decision and the Tenant's forwarding address in writing they must comply with section 38(1) of the *Act*.

The Tenant's request for return of the security deposit is dismissed with leave to re-apply. If the Landlords do not deal with the security deposit in accordance with section 38(1) of the *Act*, the Tenant can re-apply for return of the security deposit.

Compensation for monetary loss or other money owed

The Tenant sought compensation under section 51 of the *Act* for the Landlords failing to follow through with the stated purpose of a Two Month Notice. The Tenant also sought moving expenses and other compensation due to the Landlords failing to follow through with the stated purpose of the Two Month Notice.

The Two Month Notice was submitted (the “Notice”). The Notice was dated March 28, 2022, and had an effective date of June 01, 2022. The grounds for the Notice were that the rental unit would be occupied by the father or mother of the Landlords.

The Landlords agreed the Notice was served on the Tenant and that the tenancy ended pursuant to the Notice. The Landlords acknowledged they did not follow through with the stated purpose of the Notice and that the rental unit was not used for the purpose stated on the Notice. The Landlords said they made the mistake of issuing the Notice with no intention of following through with it. The Landlords outlined the history of the matter between the parties. The Tenant and their partner previously lived in the rental unit. There was a domestic violence incident and the Tenant’s partner was no longer allowed to go to the rental unit. The Landlords said the Tenant’s partner continued to contact them monthly asking if the Tenant had moved out because the partner wanted to move back into the rental unit if the Tenant moved out. The Landlords said they were dragged into the Tenant and their partner’s issues and the only way to get out of the tenancy was to issue the Notice, so this is what they did. The Landlords acknowledged they issued the Notice with no intention of having their father or mother move into the rental unit. The Landlords agreed they painted and installed a detachable wall in the rental unit after the Tenant moved out. The Landlords agreed they then re-rented the unit for a higher rent amount.

The Tenant testified as follows. They were served with the Notice and moved out pursuant to the Notice. The Landlords’ father or mother never moved into the rental unit. The Landlords renovated the rental unit and re-rented it. They are seeking section 51 compensation and further compensation related to moving and moving expenses.

The Tenant submitted documentary evidence.

Analysis

Compensation for monetary loss or other money owed

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 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(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...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...for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

RTB Policy Guideline 50 addresses section 51 of the *Act* as well as extenuating circumstances. The onus is on the Landlords to prove they followed through with the

stated purpose of the Notice within a reasonable period and for at least six months. The onus is also on the Landlords to prove extenuating circumstances.

The Landlords acknowledged they had no intention of following through with the stated purpose of the Notice when it was issued and did not follow through with the stated purpose of the Notice either within a reasonable period after the effective date of the Notice or for six months. Further, the Landlords did not rely on extenuating circumstances. The Landlords admitted they never intended to follow through with the stated purpose of the Notice. Therefore, nothing occurred that changed the Landlords' intentions or prevented them from following through with the stated purpose of the Notice. I acknowledge that the Landlords provided a history of the matter. However, the history was outlined to explain why the Notice was issued, not as an extenuating circumstance. The Landlords acknowledged they wanted to end this tenancy and issuing the Notice was the only way they could do so.

I find section 51(2) of the *Act* applies, section 51(3) of the *Act* does not apply and the Landlords must pay the Tenant 12 times the monthly rent which is **\$15,000.00**.

I do not accept that the Tenant is entitled to further compensation related to moving or moving expenses. In my view, section 51 of the *Act* sets out what tenants are entitled to when landlords fail to follow through with a Two Month Notice and I do not find that further compensation is appropriate.

Filing fee

Given the Tenant has been successful in the Application, I award them reimbursement for the **\$100.00** filing fee pursuant to section 72(1) of the *Act*.

Summary

In total, the Tenant is entitled to **\$15,100.00** and I issue the Tenant a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenant is entitled to **\$15,100.00** and I issue them a Monetary Order in this amount. This Order must be served on the 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: March 23, 2023

Residential Tenancy Branch