



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #310084744: MNETC, FFT
File #310082139: MNSDB-DR, FFT

Introduction

The Tenant files an application seeking the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 51(2) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

The Tenant filed a separate application by way of direct request in which he seeks the following relief under the *Act*:

- an order pursuant to s. 38 for the return of double the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

The Tenant’s direct request application was adjourned to a participatory hearing by virtue of the interim reasons dated November 28, 2022.

P.G. appeared as the Tenant. H.Z. appeared as the Landlord. The Landlord had the assistance of her daughters O.S. and L.S.. O.S. provided submissions on behalf of the Landlord and L.S. assisted as interpreter.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised having served his application, evidence, the interim reasons, and the reconvened notice on the Landlords. The Landlord acknowledged receipt of the Tenant's application materials without objection. Based on its acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* the Landlords were sufficiently served with the Tenant's application materials.

Preliminary Issue – Service of the Landlord's Evidence

I was advised by O.S. that the Landlord's response evidence was sent to the Tenant via registered mail sent on May 10, 2023. The Tenant says he did not receive these documents, though explains that he does not reside at the address he provided as an address for service. As explained by the Tenant, the address listed is that of his former co-tenant and partner and that he has not been to there to check if he received any mail.

It is does not seem sensible for the Tenant to provide an address for a location he does not reside as his address for service. The Landlord, reasonably in my view, relied on this address and sent her evidence to it via registered mail on May 10, 2022. Under the circumstances, I find it is no excuse for the Tenant not to retrieve the documents and that issues of service are a direct result of his own actions.

I find that the Landlord has served her evidence in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's evidence on May 15, 2022.

Issues to be Decided

- 1) Is the Tenant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?
- 2) Is the Tenant entitled to the double return of his security deposit?
- 3) Is the Tenant entitled to either of his filing fees?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I

have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on October 11, 2018.
- The Tenant vacated the rental unit on October 9, 2021.
- Rent of \$2,000.00 was due on the first day of each month.
- A security deposit of \$1,300.00 and a pet damage deposit of \$300.00 was paid to the Landlords.

I am provided with a copy of the tenancy agreement. It lists a co-tenant, H.M.. The Tenant explains that this is his former partner and that they had resided in the rental unit together. I am told she vacated sometime before the end of the tenancy.

I am advised by the parties that the Landlord served a Two-Month Notice to End Tenancy on the Tenant (the "Two-Month Notice"). I am further advised that the Landlord obtained an order of possession pursuant to a hearing that took place on October 1, 2021 after the Tenant had failed to dispute the Two-Month Notice. The file number for the previous matter is noted on the cover page of this decision.

Review of the other matter shows that the Two-Month Notice was issued on the basis that the Landlords' daughter would occupy the rental unit and listed an effective date of July 31, 2021. As stated above, the Tenant moved out on October 9, 2021.

1) *Is the Tenant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?*

Under the previous version of s. 51(2) of the *Act*, a landlord who served a notice to end tenancy under s. 49 must pay the tenant an amount equivalent to 12 times the rent payable under the tenancy agreement if:

- steps have not been taken, within a reasonable period of the effective date of the notice, to accomplish the purpose stated within the notice; and
- the rental unit is not used for the stated purpose for at least 6 months.

The new version of s. 51(2) of the *Act* places the onus of proving the relevant elements with the respondent landlord. As the Two-Month Notice was served when the previous

version was in force, I find that the previous version applies such that the onus of proving the elements rests with the applicant Tenant.

The Tenant advises that he attended the property in December 2021 and knocked on the door. The Tenant says that his former property manager answered and that when he looked inside the rental unit, it did not appear anyone had moved in. According to the Tenant, all he could see was a computer desk.

The Tenant's evidence includes a statement dated May 29, 2022 from I.G., who the Tenant tells me is lives in a neighbouring property. I.G.'s statement says the following:

I observed from my back patio on May 29/2022 in the early afternoon and evening a U-HAUL truck unloading stuff into a house. I thought new people in the neighbourhood since the house has had no activity since around Oct 2021.

The Tenant's evidence also includes a screenshot of an advertisement for the rental unit on Craigslist. The advertisement is dated May 11 and lists rent at \$3,400.00.

O.S. testifies that she did move into the rental unit, saying she moved some of her belongings on October 9, 2020, including an air mattress. O.S. further testifies that she would stay at the house and make use of the space as an office, but would go home on weekends. O.S. further testified that in December 2021 she was not at the rental unit as often, spending time at home for the holidays. O.S. explained that home was in a municipality adjacent to the rental unit's municipality in the lower mainland.

The Landlord's evidence includes utility statements for the rental unit in the Landlord's evidence from October 10, 2021 until May 20, 2022. O.S. explained she moved out of the rental unit at the end of May 2022.

On balance, I find that the Landlord's daughter did not occupy the rental unit. Occupancy in these circumstances means occupation for residential purposes. The Tenant has provided observations of a neighbouring property owner who says that there has been no activity at the property since October 2021. The Tenant testified that he attended the property in December 2021 and found the place to be unoccupied and that the property manager was present.

O.S. testified to moving into the rental unit on October 9, 2021. However, I have no photographs showing her belongings in the space or any documentary evidence

demonstrating she ever moved in. The Landlord's evidence includes utility statements in the Landlord's name, which does not demonstrate O.S. moved into the rental unit.

I further find that O.S. lacks credibility when she says she did move in. I note that rental unit is adjacent to the community O.S. moved from and she herself notes that she went home on weekends and for the holidays. It does not seem credible that she would move into the rental unit to sleep on an air mattress and live in a partially furnished three-bedroom home. It appears more likely than not that O.S. never did move in, instead staying in her home which was nearby.

I find that the Tenant has established that the purpose of the Two-Month Notice, namely its occupancy by the Landlords' child, was never fulfilled. As such, I find he is entitled to compensation under s. 51(2) of the *Act* in the amount of \$24,000.00 (\$2,000.00 x 12).

2) Is the Tenant entitled to the double return of his security deposit?

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

The Tenant testified that he provided the Landlords with his forwarding address on October 9, 2021. The Landlord's daughter acknowledges the forwarding address was received on October 9 or 10.

The Tenant states that he received \$2,000.00 from the Landlord on October 9, 2022. The Landlord confirms this, saying that this was pursuant to a settlement dealing with the end of tenancy. I understand from both parties that emotions were high during the move-out inspection on October 9, 2022 and they had an argument over damage to the rental unit.

The Landlord's evidence includes a statement dated March 23, 2023 from X.D. who says they were at the rental unit during the move-out inspection. X.D. says the Landlord estimated damages at \$1,600.00 and that after "hours" of negotiation, the Landlord agreed to pay the Tenant \$2,000.00.

The Landlord's evidence also includes a hand-written note signed by the parties on October 9, 2022. Some of the details are crossed out but it states the following:

Final Agreed Amount:
\$2000
From Landlord to Tenant
\$ two thousand dollars
Oct 9, 2021
~~No outstanding money owed by tenant.~~

I find that the Tenant is not entitled to his security deposit or compensation under s. 38(6) of the *Act* as the parties came to a settlement on the issue of damage to the rental unit and the security deposit on October 9, 2021. The Tenant himself acknowledges receipt of these funds. The settlement prevents the Tenant from advancing this claim such that it is dismissed without leave to reapply.

I make a brief note that I have considered whether the settlement also applied to the Tenant's claim under s. 51(2) of the *Act*. I find that it does not. The Landlord did not advance this position at the hearing and review of her evidence does not support that the Tenant agreed to forego a future claim under s. 51(2) upon receipt of the settlement funds.

3) Is the Tenant entitled to either of his filing fees?

I find that the Tenant is entitled to his filing fee on his successful application and not entitled to his fee on his unsuccessful application.

Accordingly, I order the Landlord pay the Tenant \$100.00 for one of his filing fees. The second claim for the filing fee is dismissed without leave to reapply.

Conclusion

I grant the Tenant compensation under s. 51(2) of the *Act* in the amount of \$24,000.00.

I dismiss the Tenant's claim for his security deposit under s. 38 of the *Act* without leave to reapply.

I grant the Tenant one of his filing fee claims and dismiss the other without leave to reapply. On balance, I order the Landlord pay the Tenant \$100.00 for his filing fee.

Pursuant to ss. 51 and 72 of the *Act*, I order the Landlord pay **\$24,100.00** to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed with 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: June 02, 2023

Residential Tenancy Branch