



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

On November 18, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 51 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with S.S. attending as her translator, and K.T. attending as counsel for the Tenant. Landlord D.K. attended the hearing, with A.B. attending as counsel for the Landlords, and J.K. attending later as a witness for the Landlords.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of K.T. and A.B., provided a solemn affirmation.

Service of the Notice of Hearing package and the parties’ respective documentary evidence was discussed, and there were no issues concerning service. As such, all parties’ evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of her security deposit?
- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recovery of the filing fee?

Issue(s) to be Decided

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2018, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on or around September 1, 2022. Rent was established at an amount of \$1,400.00 per month and was due on the first day of each month. The tenancy agreement indicated that a security deposit of \$700.00 was also paid; however, A.B. indicated that this was not actually paid by the Tenant. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

K.T. advised that the Tenant's forwarding address in writing was served to the landlord by registered mail on October 31, 2022, and A.B. confirmed that the Landlord received this.

With respect to the security deposit issue, J.K. advised that a security deposit was never collected by the Landlord because the tenancy initially started as a verbal tenancy with nothing in writing in 2018. He testified that the Tenant requested a written tenancy agreement in 2020, and that the Tenant filled out the tenancy agreement, that was submitted as documentary evidence, because the Landlord did not know English. He stated that this written tenancy agreement was backdated by the Tenant, and this is evident as the bottom right-hand corner of the agreement indicates that this form was created on "(2018/05)". He acknowledged that the Landlord did sign this agreement, but that he did not know what he was signing.

K.T. questioned the D.S. and he confirmed that the only document he ever served the Tenant was the Notice. D.S. also acknowledged that his daughter filled out this Notice. He confirmed that rent was paid in cash and that he did not ever give receipts for these payments, contrary to the *Act*. It is K.T.'s position that the Tenant paid the security deposit in cash, and that the Landlords never provided a receipt for this.

With respect to the Notice, A.B. advised that the property consisted of four different units, and that D.S. was unsure which unit he wanted to serve the Notice to. She submitted that D.S. handed her two pages of the Notice for her consideration as she wanted to discuss her options with her family. A.B. stated that this position is supported by the fact that the Tenant's name was deliberately not noted anywhere on the Notice, and that the actual, specific dispute address for the Tenant was not noted either. Furthermore, it is her position that this was not a valid Notice as the entire four-page document was never served to the Tenant.

K.T. advised that D.S. told the Tenant to leave the rental unit after the Tenant declined a suggested rent increase. He then indicated that the Tenant then demanded that D.S. serve her with a written notice to end her tenancy. He confirmed that the Tenant was only served two pages of the four-page Notice, and he curiously and repeatedly advanced the argument that in his opinion, what was served to the Tenant was not a valid Notice. However, he submitted that the Landlords knew to whom and why the Notice was served. K.T. also confirmed that the Tenant did not give any written notice to end her tenancy, let alone the required 10 days' written notice to end the tenancy early when served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

S.S. advised that the Tenant confirmed that she never provided any written notice to end her tenancy, and that she simply handed back the keys to the Landlords.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenant's claims, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered

the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Tenant’s claim for a return of the security deposit, Section 38 of the *Act* outlines how the Landlords must deal with the security deposit and pet damage deposit at the end of the tenancy. Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, according to the written tenancy agreement, the tenancy started on March 1, 2018. However, this form was not available until May 2018, so it would not have been possible for the parties to have signed this agreement unless it was backdated. As such, I am not satisfied that that this agreement was completed at the start of the tenancy. Moreover, as noted above, the burden is on the Tenant to prove her claim that a security deposit was paid. Given that this tenancy agreement was clearly backdated, I give this very little weight. Furthermore, as there is no documentary evidence provided by the Tenant to prove that she paid a security deposit, I am not satisfied that one was ever paid. As such, I dismiss this claim in its entirety.

With respect to the Tenant’s claim for 12 months’ compensation after she was served the Notice, I find it important to note that Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing the two pages of the Notice that both parties submitted as documentary evidence, there is no dispute that only half the Notice was served, that the Tenant’s name was not noted on the Notice, and that the actual address that the Tenant was renting was not indicated on the Notice either.

When reviewing the Notice in its entirety, this clearly does not conform with the required form and content of Section 52, and I am satisfied that this does not constitute a valid Notice under the *Act*. Furthermore, there is no dispute that this is not a valid Notice as even the Tenant’s counsel, K.T., remarkably also agreed multiple times that this was not a valid Notice, in his opinion. Given that the Tenant did not even serve the Landlords

with 10 days' written notice to end the tenancy early, as is required by the *Act* when served with a Two Month Notice to End Tenancy for Landlord's Use of Property, I find this further supports a conclusion that the Tenant did not believe she was served a valid Notice. As K.T. acknowledged that this was not a valid Notice, it is not logical to me how he can then simultaneously advance an argument that the Tenant should be entitled to 12 months' compensation pursuant to Section 51 of the *Act*. Consequently, I wholly reject the Tenant's claim for 12 months' compensation, and I dismiss this claim in its entirety.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, the Tenant's Application is dismissed without leave to reapply.

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: August 16, 2023

Residential Tenancy Branch