



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC MNSD FF

Preliminary Issues

At the outset of the hearing the Agent advised that her father, the Landlord to this dispute, was out of the country and that she had sent a fax to the *Residential Tenancy Branch* advising she would attend the hearing on his behalf. She confirmed that she had full authority to represent the Landlord as his Agent.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, for the return of all or part of the pet and or security deposit, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the Act, sent via registered mail. The Landlord's Agent confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Agent confirmed receipt of the Tenant's evidence.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a monetary order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written tenancy agreement effective October 1, 2009. Rent was payable on the first of each month in the amount of \$700.00. A security deposit of \$350.00 was paid on or before October 1, 2009.

The Tenant testified the Landlord served her with a 2 Month Notice to End Tenancy on March 15, 2010. The Tenant then served the Landlord on March 17, 2010, with 10 days written notice to end the tenancy by March 31, 2010 which was a hand written note placed in the Landlord's mailbox. The Tenant stated that in the past the Landlords refused to answer their door or phone when she wanted to talk to them about a tenancy issue which is why she would communicate by leaving notes in the mailbox.

The Tenant stated her roommate vacated the unit at the beginning of January 2010 and she vacated the property March 31, 2010. Rent was paid in full up to the end of March 31, 2010. She left her forwarding address and the keys to the unit in the mailbox. The Tenant read a letter during the hearing that she had placed in the Landlord's mailbox on May 19, 2010 where she requested the return of her security deposit and compensation equal to one month's rent for being issued the 2 Month Notice. When she did not hear back from the Landlord she sought assistance through the dispute resolution process.

The Agent testified that they did not receive the Tenant's notice to end the tenancy for March 31, 2010 and when they checked the unit in early May 2010 they saw the Tenant still had belongings in the suite which consisted of a couch and a dresser and some other belongings. They made several attempts to contact the Tenant on May 15, 2010 and when there was no answer they assumed she had abandoned her property and they took possession of the unit. She stated they did not receive the keys back or the Tenant's forwarding address. They had the Tenant's security deposit which they applied to one half of a month's rent and the remainder of the time was the Tenant's compensation for getting the notice to move. The Agent confirmed they did not make application for dispute resolution to keep the security deposit and they do not have the Tenant's permission to keep the deposit; however they were required to changed the locks on the unit and store the Tenant's possessions and take them to the dump in the summertime.

The Agent confirmed her brother and she lived upstairs with her parents, the Landlords, and the Tenant occupied the basement suite below. The unit was not re-rent as her brother and his new wife moved into the unit at the end of June 2010. She stated that someone is always home so they would have opened the door if the Tenant rang the bell.

The Tenant stated that she would see her Landlord's or one of their adult children regularly or at least on a weekly basis. She also shared a common laundry room with their family. She confirmed that someone was usually always home but that the Landlord's wife would not always answer the doorbell or the telephone when she would call. She did leave a couch in the rental unit but no other possessions were left behind.

Analysis

I have carefully considered the testimony and documentary evidence which consisted of, among other things, a copy of the 2 Month Notice to End Tenancy and a written statement of additional details signed by the Tenant.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

A significant factor in my considerations is the credibility of the Agent's testimony. I am required to consider the Agent's evidence not on the basis of whether her testimony "carried the conviction of the truth", but rather to assess her evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

That being said, I do not accept the Agent's testimony that they did not know the Tenant had vacated the rental unit March 31, 2010 when her entire family lived directly above the basement suite that the Tenant occupied and shared a common laundry facility. There is also the issue that the Tenant did not pay rent on April 1, 2010, yet the

Landlord made no attempt to collect this rent or seek monetary compensation for unpaid rent through dispute resolution. Based on the aforementioned, and in the presence of the Tenant's May 19, 2010 letter requesting the return of her security deposit and compensation for the 2 Month Notice, I find that on a balance of probabilities, the Landlord knew the Tenant ended her tenancy March 31, 2010 and no compensation was paid to the Tenant for issuing the 2 Month Notice to End Tenancy.

Section 50(1)(a) of the Act provides if a landlord gives a tenant notice to end a periodic tenancy under section 49 (landlord's use of property) the tenant may end the tenancy early by giving the landlord at least 10 days written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

Section 51(1) of the Act states a tenant who receives a notice to end tenancy under section 49 (landlord's use of property) is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case the evidence proves the Tenant was issued a 2 Month Notice pursuant to section 49 of the Act and is therefore entitled to compensation of \$700.00 the amount equal to one month's rent. Having found above that the Tenant ended the tenancy March 31, 2010, in accordance with section 50 of the Act, she has not received compensation for receipt of the Notice as her rent was paid in full up to March 31, 2010. Therefore, I hereby find the Tenant has met the burden of proof and I award her monetary compensation of **\$700.00**.

The evidence supports that the Tenant provided the Landlord with her forwarding address on March 31, 2010 when she returned the keys and again in her May 19, 2010 letter.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than April 15, 2010 or if given the benefit of the doubt by June 4, 2010, fifteen days after the May 19, 2010 letter. As of today's date the Landlord has not made application for dispute resolution to retain the security deposit.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the Act and that the Landlord is now subject to Section 38(6) of the Act which states that

if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double security deposit plus interest in the amount of **\$700.00** (2 x \$350.00 + \$0.00 interest).

The Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$1,450.00** (\$700.00 + (2x\$350) + \$50.00). This Order must be served on the respondent Landlord and may be filed in 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: February 16, 2011.

Residential Tenancy Branch