



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant was permitted to provide additional evidence after the hearing had concluded to both the Arbitrator and the landlord. The landlord confirmed receipt of evidence at the hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The landlord provided late information on August 17, 2015 concerning a request to have the hearing rescheduled as the landlord cannot get time of work to attend the hearing, to prepare a rebuttal to the tenant's application; and to access a lawyer to act as an advocate for the landlord; however, at the hearing the landlord was in attendance and

the hearing proceeded I declined to adjourn the hearing pursuant to the Rules of Procedure 6.6 as in my view the landlord had sufficient time to prepare for this hearing.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover her security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on July 30, 2014. Rent for this unit was \$1,000.00 per month due on the 1st of each month. The tenant paid a security deposit of \$500.00 on July 30, 2014. The tenancy ended on October 31, 2014.

The tenant testified that the landlord served the tenant with a Two Month Notice to End Tenancy on September 30, 2014. This Notice had an effective date of November 30, 2014 and indicated that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The tenant testified that she gave the landlord a written Notice to end the Tenancy on October 31, 2014 two weeks prior to the end of October. This Notice was posted to the landlord's garage door as the landlord used the garage as his main entry into his unit. The tenant provided a copy of this Notice and a picture of it on the garage door after the hearing had concluded by consent of the Arbitrator. The tenant testified that she had paid rent for the month of October but did not receive compensation for the Two Month Notice back from the landlord. The tenant seeks to recover compensation equal to one month's rent of \$1,000.00.

The tenant testified that she provided the landlord with her forwarding address in writing by email on November 04, 2014. This email also contained the tenant's request for the landlord to mail the damage report to the tenant. On November 04, 2014 the landlord responded to this email and sent the tenant a copy of the damage report. The tenant disputed the landlord's claim for damage to the unit. The tenant agreed at the hearing that the landlord may keep \$65.00 of her security deposit to cover the landlord's costs incurred to remove the tenant's garbage to the dump.

The tenant testified that the landlord did not return her security deposit within 15 days and therefore the tenant seeks to recover double the security deposit to an amount of \$1,000.00.

The landlord disputed the tenant's claims. The landlord agreed that he did give the tenant a Two Month Notice to End Tenancy for landlords use of the property; however, the landlord testified that he did not receive written notice from the tenant that she was ending the tenancy two weeks prior to October 31, 2014 although the landlord agreed he did get this notice verbally. The landlord testified that he was advised by the Residential Tenancy Branch to give the tenant a month's rent back but when the landlord offered it to the tenant she did not want it.

The landlord agreed that he did not complete a move in or move out condition inspection report at the start or end of the tenancy; however, the unit had some renovation work done to it before the tenant moved in and the unit was in a good condition. At the end of the tenancy there was some damage to the unit which the tenant had not repaired and the tenant had left an amount of garbage which the landlord had to remove. The landlord does not recall receiving the tenant's forwarding address but testified he may have if he had responded to her email.

The landlord understands he should have filed an application to keep the security deposit and that the tenant is entitled to recover double the security deposit.

The landlord asked the tenant that in her testimony she said she had placed a written notice to the garage door, where was it placed? The tenant responded that it was tapped securely to the garage door; the tenant took a picture of it and had a witness present.

The tenant confirmed that she had made an error in her calculations concerning the amount claimed. The tenant had claimed \$3,000.00 on her application; however, the amount should be \$2,000.00

Analysis

I have carefully considered the evidence of both parties and make findings on the balance of probabilities concerning the tenant's application for compensation owed to the tenant for the Two Month Notice. S. 51(1) of the *Act* provides that a tenant who is served a Two Month Notice is entitled to receive from the landlord an amount that is equivalent to one month's rent payable under the tenancy agreement.

I find the landlord served the tenant with a valid Notice that complied with the *Act* and it contained a vacancy date on the Notice of November 30, 2014. Therefore, under the *Act*, the landlord is liable to give the tenant one month's rent as compensation for the Notice in the amount of **\$1,000.00**.

S. 50 of the *Act* allows a tenant to end a tenancy earlier than the vacancy date of the Notice. If a tenant intends to end the tenancy earlier then the effective date of the Notice. S. 50(1) (a) of the *Act* requires the tenant to give the landlord at least ten days' written notice.

In this case, I accept the tenant's evidence that a Notice was posted to the landlord's garage door as this was the landlord's main entrance into his unit on October 21, 2014. This Notices advised the landlord that the tenancy was going to end on October 31,

2014. I also find the landlord agreed the tenant had verbally informed the landlord of her intention to end the tenancy on October 31, 2014.

Therefore, I find that the landlord was put on notice both verbally and in writing that the tenancy was going to end earlier than the effective date on the Notice. I find the landlord's argument that he was not given written notice by the tenant is an attempt at avoiding payment to the tenant under s. 51 of the *Act*.

Furthermore, s. 50(3) of the *Act* states that the requirement for a tenant to give a written 10 day notice to end the tenancy early does not affect the tenant's right to compensation under s. 51 of the *Act*. I therefore uphold the tenant's claim for compensation to an amount of **\$1,000.00**.

With regard to the tenant's application to recover double the security deposit; s. 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to s. 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Further to this, s. 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenant moved in and out of the unit, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing whichever is the later date. While an email is not considered to be the correct way to provide a forwarding address in writing as the landlord did respond to this email I find the landlord has received the tenant's forwarding address for the purpose of this *Act*.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on November 04, 2014. As a result, the landlord had until November 19, 2014 to return all of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of \$1,000.00, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

During the hearing the tenant verbally agreed the landlord could deduct the amount of **\$65.00** from the security deposit for his costs incurred to remove the tenant's garbage from the unit. I have therefore deducted this amount. This leaves the amount of **\$935.00** to be returned to the tenant.

As the tenant's claim has merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount:

Compensation for Two Month Notice	\$1,000.00
Double security deposit less amount agreed upon	\$935.00
Filing fee	\$50.00
Total amount due to the tenant	\$1,985.00

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to s. 67, 38(6)(b) and 72(1) of the *Act* in the amount of **\$1,985.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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 20, 2015

Residential Tenancy Branch

