



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This was a hearing with respect to the tenant's application for a monetary award and for the return of the security deposit. The hearing was conducted by conference call.. the tenant called in and participated in the hearing. The landlord did not attend. The landlord was served with the application and Notice of Hearing sent by registered mail on February 2, 2015. Canada Post records show that the landlord failed to pick up the registered mail despite several notices informing him that the mail was available for pickup. The failure or refusal to pick up registered mail is not a valid excuse for non-attendance at a hearing; the landlord is deemed to have received the registered mail on the fifth day after it was sent, pursuant to section 90 of the *Residential Tenancy Act*.

Issue(s) to be Decided

Is the tenant entitled to compensation pursuant to section 51 of the *Residential Tenancy Act* because the landlord has not used the property for the purpose stated in a two month Notice to End Tenancy for landlord's use?

Is the tenant entitled to the return of his security deposit?

Background and Evidence

The rental unit is an apartment in Victoria. The tenancy began in February 2011 for a one year fixed term ending January 31, 2012. The tenant paid a security deposit of \$775.00 at the commencement of the tenancy. The parties signed a second fixed term agreement for a term commencing February 1, 2013 and ending January 31, 2014. The security deposit was carried over. The rent for the new term was \$1,550.00 per month. The tenancy continued on a month to month basis after the end of the fixed term.

The landlord served the tenant with a two month Notice to End Tenancy for landlord's use dated October 22, 2014. The Notice required the tenants to move out by December 31, 2014. The reason for ending the tenancy was that the rental unit would be occupied by the landlord or a close family member.

There was a previous application brought by the tenant to cancel an earlier Notice to End Tenancy for landlord's use. The previous Notice was cancelled and the tenancy continued.

The tenant did not dispute the Notice to End Tenancy. He moved out of the rental unit on January 1, 2015. The tenant submitted documents that showed that the rental unit has been offered for sale and continues to be offered for sale since the tenant moved out of the unit. The landlord provided a copy of a sales listing for the rental unit. The tenant testified that the landlord was attempting to sell the unit before the end of the fixed term and he was informed that the landlord felt that the unit would be easier to sell if it was vacant. The tenant said that the landlord has not moved into the unit and it continues to be vacant and listed for sale.

The tenant said that there was a dispute between the tenants and the landlord with respect to the cleaning of the rental unit. The landlord said that the unit was not properly cleaned and the carpets were not cleaned. The landlord sent e-mail messages to the tenant saying that he intended to deduct cleaning charges and send the tenant the balance of the deposit. The tenant disagreed with the landlord as to the cleanliness of the unit and requested the return of the full deposit amount. The deposit has not been returned and the landlord has not applied to claim the deposit.

Analysis

Section 51(1) of the Act requires that a landlord who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The applicant seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the landlord has not taken steps to accomplish the stated purpose for ending the tenancy.

Upon the evidence before me it is my finding that the applicant is entitled to the compensation pursuant to section 51 (2) of the *Act*. The landlord served a Notice to End Tenancy on the ground that he intended to occupy the rental unit, yet before the

tenants had moved out, he had already listed the property for sale and his realtor was attempting to arrange showings to prospective purchasers. The tenant has provided copies of the advertisement for sale and the response of the realtor to inquiries about the rental unit. The tenants vacated pursuant to the Notice, more than six months has passed and it is apparent that that the property has not and will not be used for the purpose stated in the Notice to End Tenancy. The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. I find that the landlord must pay to the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. The monthly rent payable under the tenancy agreement was the sum of \$1,550.00 and the tenant is therefore entitled to an award of \$3,100.00.

The tenant has claimed the return of his security deposit. He has not formally provided the landlord with his forwarding address in writing, although there were many e-mails exchanged concerning the deposit and the landlord declined to return the deposit, but has made no application to claim it. I find that the tenant is entitled to the return of the deposit, but not to an award of double the deposit pursuant to section 38 because he has not formally provided the landlord with his forwarding address in writing.

Conclusion

The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$3,925.00 and I grant the tenant an order under section 67 in the said amount. This order may be filed in the Small Claims 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: August 12, 2015

Residential Tenancy Branch

