



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, mnsd, ff

Introduction:

The tenants request the doubling of their security deposit, and compensation related to an alleged failure of the landlord to use the premises for the purpose stated in the Two Month Notice to End Tenancy.

Issues to Be Decided:

Are the tenants entitled to a doubling of their deposit?

Are the tenants entitled to monetary compensation from the landlord related to the failure to use the premises for the purpose stated in the Notice?

Background and Evidence:

This tenancy began August 1, 2009, with monthly rent of \$1,800.00. A security deposit of \$900.00 was paid. On about September 1, 2011, the premises were sold (subject to the existing tenancy) and the new owner as successor in title became the landlord.

On October 4, 2014, the landlord entered into a Contract of Purchase and Sale to sell the premises, with a closing date of January 7, 2015. The Contract included the following term:

The Seller will give legal notice to the Tenant to vacate the premises, but only if the Seller receives the appropriate written request from the Buyer to give such notice in accordance with the requirements of section 49 of the Residential Tenancy Act.

On October 6, 2014, the landlord was given a written notice by the Buyer for vacant possession of a tenant occupied property. The Notice stated:

I/We (or my spouse, my/our children, my/our parent(s) intend in good faith to occupy the residential premises I/We am/are purchasing under the Contract of Purchase and Sale dated October 4, 2014.

All subjects have been removed, and I/We hereby request that you as landlord give the tenant(s) of the premises a notice under the Residential Tenancy Act,

ending the tenancy and requiring the tenant(s) to vacate the premises by January 1, 2015.

On October 10, 2014, the landlord complied and served the tenants with a Two Month Notice to End Tenancy. The notice confirmed that an Agreement of Purchase and Sale had been signed, and that the purchaser wanted to move into the rental unit. The notice was effective to end the tenancy December 31, 2014, and the tenants moved out in accordance with the notice. As required when a Two Month Notice is given, the rent for the final month was refunded to the tenants.

The female tenant regularly passed by the house thereafter. She saw the new owner there during the day doing renovations, but after 3 months no one had yet actually moved in to reside in the house. Even after 6 months, there was still no one residing in the house.

As the deposit, the landlord had the tenants mailing address during the tenancy, and this address was provided to the landlord again by way of text message on January 13, 2015. The landlord's agent thought he mailed the security deposit to the tenants on January 15, but in fact he had mailed a different cheque. After this error was discovered on February 9, 2015 he mailed the correct cheque to the tenants. The tenants received the deposit repayment on or about February 19, 2015.

Analysis:

I address first the tenants' claim to receive double the security deposit from the landlord. In most situations, section 38(1) of the Residential Tenancy Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address to return the deposit (or to file an application to retain the deposit). If the landlord fails to do so, then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit, by virtue of section 38(6).

In this case the tenancy ended December 31, 2014, and the landlord's realtor has provided evidence that the forwarding address was received by way of text message on January 13, 2015. Although the landlord was aware of this address being used for mailing purposes throughout the tenancy, I find that it was on January 13, 2015 that this address was confirmed as the tenants' actual forwarding address. The 15 day period to return the deposit therefore began on January 13. Due to an unfortunate error by the landlord's agent of mailing a wrong cheque, the actual repayment of the security deposit occurred February 19, 2015, when the cheque was received by the tenants. This date was beyond the allowable 15 day period. While the delay was unintentional, the specific

requirement to repay the deposit within the 15 day period was not met. I find under these circumstances the tenants are entitled to double the deposit. A further \$900.00 is therefore due to the tenants by the landlord.

I turn to consider the claim for compensation related to the manner and reason by which the tenancy was ended. Section 49(5) of the Residential Tenancy Act permits a landlord to end the tenancy, if the landlord enters into an agreement in good faith to sell the rental unit, all conditions of the sale have been satisfied, and the purchaser asks the landlord in writing to give notice to the tenant upon the grounds that the purchaser or a close family member intends in good faith to occupy the rental unit. My review of the various contractual documents between the purchaser and the landlord as seller confirm that a Contract of Purchase and Sale was entered into in good faith, and that all subject clauses for that sale were eventually removed, and the agreement became binding upon the parties. Further, it is clear that the purchaser specifically asked the landlord in writing to give the two month notice to the tenants, on the basis that he or a close family member intended to occupy the premises.

When a 2 month notice is given for landlord use of the premises, section 51(2)(b) of the Residential Tenancy Act entitles the tenants to compensation equal to double the monthly rent, 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 accept the testimony of the tenant that a reasonable time has passed, yet the home remains vacant.

A difficulty arises as to whether under the present circumstances the landlord is the one liable to compensate the tenants. The provisions of Section 51(2) require that the landlord, **or the purchaser, as applicable** (my emphasis) must pay the compensation to the tenants. As it was the purchaser that required vacant possession of the premises in this case, and it was the purchaser that required that the landlord serve the notice to end the tenancy, it is therefore the purchase that is liable to pay the compensation.

No claim by the tenants has been made as against the purchaser in this application, and the purchaser was not included as a party (or a third party) in this action. The principles of natural justice would be breached if that party were not notified of this claim, and be provided opportunity to respond to the claim against them. I make no order as against the purchaser therefore, but I specifically dismiss this claim as against the landlord.

As the tenants are successful with the security deposit claim, it is appropriate that the tenants recover their \$50.00 filing fee from the landlord.

The total sum awarded to the tenants is \$950.00.

Conclusion:

The landlord must pay the sum of \$950.00 to the tenants.

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: September 10, 2015

Residential Tenancy Branch

