



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant provided testimony that the landlord was served with the amended notice of hearing package and the submitted documentary evidence on May 11, 2016 via Canada Post Registered Mail. The tenant has submitted as proof of service a copy of the Customer Receipt Tracking number as confirmation. I accept the undisputed affirmed evidence of the tenant and find the landlord was properly served with the notice of hearing package via Canada Post on May 11, 2016 as per sections 88 and 89 of the Act. The landlord is deemed to have received the packages 5 days later as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation under the Act, regulation or tenancy agreement, for the return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2013 on a fixed term tenancy until June 30, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated May 22, 2013. The monthly rent was \$2,500.00 payable on the 1st day of each month and a security deposit of \$2,500.00 was paid on July 1, 2013.

The tenant provided undisputed affirmed testimony that the landlord served her with a 2 Month Notice dated August 31, 2015 in person on August 31, 2015. The 2 Month Notice displays an effective end of tenancy date of August 31, 2015, but the tenant clarified that the tenancy ended on October 30, 2015. The 2 Month Notice sets out the reason given as:

The rental unit will be occupied by the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse.

The tenant seeks a monetary claim of \$10,854.17 which consists of:

\$800.00	Moving Costs
\$1,018.08	Extra labor fee (tenants time to pack and find a new place)
\$1,600.00	Loss of income (tenant ran a daycare out of rental premises)
\$836.09	House Moving Expenses
\$1,600.00	Loss of income (location change resulted in loss of daycare clients)
\$5,000.00	Return of Double Security Deposit

The tenant provided undisputed affirmed testimony that after complying with the landlord's 2 Month Notice by moving out on October 30, 2015, the landlord failed to return the \$2,500.00 security deposit. The tenant stated that her forwarding address in writing was given the landlord on paper on October 30, 2015. The tenant stated that as of the date of this hearing the landlord has not returned the original \$2,500 security deposit nor is she aware of the landlord making an application to dispute its return.

The tenant also provided undisputed affirmed testimony that she found an online ad on November 1, 2015 dated October 28, 2015 showing the landlord advertising the rental premises for rent. The tenant also noted that the ad was later updated on December 1, 2015. The tenant also provided 8 pages of Chinese online advertisements showing rental address and the cellular phone number of the landlord advertising the premises for rent. The online advertisements start on December 1, 2015, December 7, 2015, December 20, 2015, January 12, 2016 and January 27, 2016. The tenant stated that this clearly shows that the landlord has not occupied the rental premises and has

instead re-rented the premises. The tenant stated that she witnessed new tenants living at the rental premises in April 2016.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I accept the undisputed and affirmed evidence of the tenant and find that the landlord has failed to return the \$2,500.00 security deposit after receiving the tenant's forwarding address in writing on October 30, 2015. As of the date of this hearing, the landlord has not applied for dispute resolution to dispute its return. On this basis, I find that the tenant is entitled to the return of the \$2,500.00 security deposit.

The landlord having failed to comply with section 38 (1) of the act is also required to pay an amount equal to the \$2,500.00 security deposit under section 38 (6) of the Act.

Section 51(2)(b) of the Act sets out that where a rental unit is not used for the stated purpose for a period of at least six months the landlord must pay the tenant double the rent payable under the tenancy. In this case, the 2 Month Notice sets out that the stated purpose was for the landlord to occupy the rental premises. The monthly rent during the tenancy was \$2,500.00. The tenant has provided undisputed affirmed evidence that the landlord immediately began advertising the rental premises for rent on October 28, 2015 before she had vacated the rental on October 30, 2015. The tenant has also provided undisputed evidence that the advertising continued until January 27, 2016 and that the tenant has witnessed new tenants living in the rental premises as of April 2016. I accept the undisputed affirmed evidence of the tenant and find that I am satisfied that the landlord has failed to use the rental premises as per the listed reason for use on the 2 Month Notice. The tenant is entitled to compensation equal to double the rent payable under the tenancy (\$5,000.00).

Section 51 of the Act states that the tenant is entitled to compensation after being served with a 2 Month Notice if 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 of October 30, 2015. That compensation is the equivalent of double the monthly rent. As such, the tenant is not entitled to other compensation for

moving costs or expenses incurred. The remaining portions of the tenant's monetary claim are dismissed.

The tenant having been successful in her application is entitled to recovery of the 50.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$10,000.00 under the following terms:

Item	Amount
Return of Original Security Deposit	\$2,500.00
Failure to Comply with Sec. 38	2,500.00
Fail to Use for Intended Reason (Sec. 51)	5000.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$10,050.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: June 30, 2016

Residential Tenancy Branch