



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

On March 3, 2017, the Tenants submitted an Application for Dispute Resolution asking that the Landlord comply with the Act, Regulation, or tenancy agreement; for a monetary order for money owed or compensation for damage or loss under the Act, the regulations, or a tenancy agreement; for the return of the security deposit; and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Landlord and Tenants appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed they received the evidence from the other party.

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 and Procedural Matters

At the start of the hearing the documentary evidence from the Landlord and Tenants was reviewed. A two page written document from the Tenant was excluded from the hearing because the Tenant never served it to the Landlord. An eight page written document from the Landlord was excluded because the Landlord never served it to the Tenant. Both parties were informed that they could provide oral testimony on the contents of the excluded documents.

The Landlord confirmed that he received 37 pages of documentary evidence from the Tenants on July 3, 2017, three days prior to this hearing. He testified that he has reviewed and considered the Tenant's evidence and he wants to proceed with the hearing.

Issues to be Decided

- Are the Tenants entitled to money owed or compensation from the Landlord?
- Are the Tenants entitled to the return of double the security deposit
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began in August 2014. Rent in the amount of \$1,945.00 was to be paid to the Landlord on the first day of each month. The Tenants paid the Landlord a \$950.00 security deposit.

Security Deposit

The Tenant is seeking compensation in the amount of \$1,900.00 which is double the amount of the security deposit. The Tenants testified that the Landlord failed to return the security deposit to them within 15 days of the end of the tenancy after providing written notice of their forwarding address on February 6, 2017.

The Tenants submitted that there was no written agreement that the Landlord could retain any amount of the security deposit. The Tenants provided a photograph of their forwarding address that they posted it to the Landlord's door.

In response, the Landlord testified that he was told to deduct utility costs from the security deposit. He testified that the Tenants agreed he could hold the deposit until the utility cost was received.

The Landlord referred to an email he sent to the Tenants on February 15, 2017, where he explains to the Tenants that he has decided to claim money for utilities and damages.

Compensation for 2 Month Notice

The Tenants are seeking compensation in the amount of \$1,667.16. The Tenants submitted that they did not receive compensation from the Landlord after receiving a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated December 26, 2016.

The Tenants submitted that the Landlord failed to give them the compensation they are entitled to under the Act. The Tenants submitted that they gave the Landlord written notice to end the tenancy on January 19, 2017, to be effective on February 4, 2017. The Tenants moved out of the rental unit on February 4, 2017.

The Tenants claim for \$1,667.16 is the pro-rated amount of rent for the remainder of February 2017.

In response, the Landlord testified that he did not pay the Tenants compensation for the 2 Month Notice. The Landlord submitted that the Tenants vacated after 1:00 pm on February 4, 2017, and they should not have to pay for an additional day.

Compensation for Breach of Section 51

The Tenants are seeking compensation in the amount of \$3,890.00 which is the equivalent of double the monthly rent payable under the tenancy agreement.

The Tenants submitted that they received the 2 Month Notice To End Tenancy For Landlord's Use Of Property within a month to saying no to the Landlords request that they pay an 8% rent increase.

The Tenants submitted that the rental unit was not used for the stated purpose within the 2 Month Notice. The reason within the Notice is:

The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Tenants submitted that the Landlord and his wife did not move into the rental unit and they found that the rental property was advertisement online as available to rent.

The Tenants testified that the rental property is now listed for sale as of April 2017.

In response, the Landlord testified that his mother who is also the Landlord of the property moved into the rental unit.

The Tenant acknowledged that he placed an advertisement online listing the property for rent. He testified that he placed an advertisement for the upper and lower unit for research purposes to establish the rental market for the suites. He testified that he never responded to any inquiries regarding the suites.

The Landlord testified that he put the rental property up for sale towards the end of April 2017, and it is still for sale.

The Landlord testified that his mother is still living in the rental unit.

In response, the Tenants submitted that they do not know if the Landlord's mother is living there.

Analysis

Section 50 (1) of the Act states if a landlord gives a tenant notice to end a periodic tenancy under section 49, for Landlords 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 that a Tenant who receives a notice to end a tenancy under section 49 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.

Section 51 (2) of the Act states 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 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.*

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Security Deposit

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

I find that the Tenants provided their forwarding address to the Landlords on February 6, 2017. The Landlord did not apply for dispute resolution within 15 days of receiving the Tenants' forwarding address. I find that there was no written agreement from the Tenants that the Landlord could retain the security deposit or pet damage deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit and pet damage deposit.

I order the Landlords to pay the Tenants the amount of \$1,900.00.

Compensation for 2 Month Notice

I find that the Tenants received a 2 Month Notice from the Landlord and they are entitled to one month's rent payable under the tenancy agreement. The Tenants provided Notice to the Landlord in accordance with section 50 of the Act and moved out on February 4, 2017. I find that the Landlord owes the Tenant the equivalent of one month's rent payable under the tenancy agreement, less the four days of occupancy in February 2017.

While I acknowledge that the tenancy agreement states the Tenants must vacate the rental unit by 1:00 pm on the last day of the tenancy, the Landlord provided insufficient evidence that he suffered any loss due to the Tenants moving out after 1:00 pm. The Landlord's request to assess an extra day of rent to the Tenants is dismissed.

I find the Landlord owes the Tenant \$1,667.16 in compensation for the remainder of the month of February 2017.

Compensation for Breach of Section 51

The reason for ending the tenancy within the 2 Month Notice is that the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Landlord testified that his mother, who is also the Landlord, moved into the rental unit. The testimony from the Landlord and Tenants that the rental property was put up for sale in April 2017, is consistent with the Landlord's evidence that he was doing market research to establish what the market for the property.

There is insufficient evidence from the Tenants that the Landlord has rented the unit out to a new Tenant.

While I acknowledge that the Landlord placed the house up for sale a couple of months after the effective date of the Notice, the house has not sold and I find that this situation does not entitle the Tenant's to compensation due to a breach of section 51 of the Act.

The Tenants' request for compensation of two months' rent is dismissed.

Filing Fee

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were mostly successful in their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

The Tenants' have established a monetary claim in the amount of \$3,667.16.

I grant the Tenants a monetary order in the amount of \$3,667.16. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit within 15 days of receiving the Tenants' forwarding address and did not compensate the Tenants after issuing a 2 Month Notice to end tenancy.

The Tenants are granted a monetary order in the amount of \$3,667.16.

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: July 14, 2017

Residential Tenancy Branch