



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MT, O, OLC

Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$2850.00, and requesting an order for recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established a monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on July 1, 2016 with the monthly rent of \$900.00 due on the first of each month.

The parties also agree that the tenant paid a security deposit of \$900.00 on June 15, 2016.

The parties also agree that the tenant was personally served with a two-month Notice to End Tenancy on May 5, 2017.

The parties also agree that the tenant vacated the rental unit on July 30, 2017 and that the tenant gave the landlord a forwarding address in writing on that date.

The parties also agree that the landlord returned \$750.00 of the security deposit and holds the remainder.

The tenant testified that he did not give the landlord any permission to keep a portion of his security deposit, and therefore he's requesting an order for return of doubled his security deposit less the amount already returned, as he is been advised that this is what the Residential Tenancy Act requires.

The tenant further testified that the landlord gave him a two-month Notice to End Tenancy, stating that her daughter was going to move into the rental unit, however her daughter never did so, and in fact the landlord advertised the unit for rent, at a higher rent, shortly after he moved out.

The tenant further testified that he received the two-month Notice to End Tenancy one day after informing the landlord that she could not give him a rent increase without the proper notice. As evidence of this the tenant points to a letter he sent to the landlord on May 2, 2017 where he mentions discussing the rent increase with the landlord, and the fact that she put a handwritten Notice to End Tenancy on his door the day following that discussion.

The tenant is therefore requesting an order that the landlord to reimburse him the equivalent of double his \$900.00 rent for a total of \$1800.00 as required by the Residential Tenancy Act.

The landlord testified that she did not apply for dispute resolution to hold any or all of the security deposit, she just held \$150.00 of the deposit as a cleaning fee since the unit was not left clean.

The landlord further testified that her daughter was originally planning to move into the rental unit, as she was planning to go to university at UBC; however she subsequently was rejected by UBC on June 22, 2017. She further states that her daughter later received acceptance to McMaster University on August 3, 2017, and therefore her plans changed, and she moved to Ontario.

The landlord further testified that she did not discuss a rent increase with the tenant the day before giving the Notice to End Tenancy, the only time she had ever discussed a rent increase with the tenant was on January 31, 2017, well before the notice was given.

The landlord further testified that she did receive the letter that was sent to her by the tenant on May 2, 2017, however even though it mentions a discussion of a rent increase, no such discussion ever took place, and she denies that the reason for giving the Notice to End Tenancy was given in bad faith.

Analysis

Security Deposit

Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants full security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on July 30, 2017 and the landlord had a forwarding address in writing by July 30, 2017 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore it is my decision pursuant to section 62 of the Residential Tenancy Act that the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a security deposit of \$900.00, and therefore the landlord must pay \$1800.00 less the \$750.00 already returned, for a total of \$1050.00.

Tenant compensation for Section 49 notice

Section 49(3) of the Residential Tenancy Act states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends **in good faith** to occupy the rental unit. **(My emphasis)**

It is my finding, based on the balance of probabilities, that the Notice to End Tenancy given by the landlord was not given in good faith.

The landlord originally gave a handwritten two-month notice to the tenant on May 1, 2017 and the tenant has testified, and also mentioned in a letter to the landlord, that this notice was given the day after he rejected the landlord's request for a rent increase.

The landlord has stated that she did not discuss a rent increase with the tenant one day before giving the notice; however I find it very unlikely that the tenant would have mentioned the discussion of the rent increase in his letter of May 2, 2017, which the landlord admits receiving, had such discussions not taken place.

It is my finding that it is more likely than not, that the Notice to End Tenancy was given as a result of the tenant's rejection of the rent increase.

Further, Section 51(2) of the Residential Tenancy Act states

- (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

It is my decision therefore pursuant to section 51 and 62 of the Residential Tenancy Act that the landlord is required to pay the tenant the equivalent of double the monthly \$900.00 rent, for a total of \$1800.00.

Having allowed the tenants full claim I also allow the tenant's request for recovery of the \$100.00 filing fee.

Therefore the total amount I have allowed is as follows:

Double security deposit, less \$750.00 already returned	\$1050.00
Equivalent of double the monthly rent	\$1800.00
Filing fee	\$100.00
Total	\$2950.00

Conclusion

Pursuant to sections 67 and 72 of the Residential Tenancy Act I've issued a Monetary Order for the respondent to pay \$2950.00 to the applicant.

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: March 14, 2018

Residential Tenancy Branch