



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, MNSD, MNETC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38;
- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and had no issues with timely receipt of the documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation?

Should the tenant's security deposit be returned to him, doubled?

Can the tenant recover the filing fee?

Background, Evidence and Analysis

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A partial copy of the tenancy agreement was provided as evidence by the tenant. The fixed three-year tenancy was commenced on November 1, 2015, becoming month to month on November 1, 2018. Rent is due and payable on the 5th of each month. The named tenant on the tenancy agreement is the father of the person attending the hearing today. The parties agree that the person named as tenant on this application for dispute resolution has been residing in the rental unit since the beginning and that he was named as the personal representative of the estate of the deceased father in a previous arbitration (file number is recorded on the cover page of this decision).

On March 2, 2021, the parties attended a dispute resolution hearing before an arbitrator and settled a dispute where the landlord sought an order of possession for landlord's use of property. The parties mutually agreed that the tenant, WD and all other occupants of the rental unit will vacate the rental unit and provide the landlord with vacant possession of the rental unit on or before May 31, 2021 at 1:00 pm. The arbitrator made no factual findings about the merits of the landlord's application and issued an Order of Possession to the landlord based on their mutual agreement.

The tenant seeks compensation from the landlord under sections 51(1) and 51(2) of the Act which says:

Tenant's compensation: section 49 notice

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the

amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The tenant testified that he did not move out of the rental unit on May 31, 2021 but remained occupying it until July 9, 2021. He testified that he paid rent for the month of June and the government agency that subsidizes his rent paid the landlord \$700.00 for July's rent up until July 9th. The tenant did not provide any proof of payment for June's rent and but testified that the landlord texted his brother acknowledging receipt of \$1,000.00. The tenant argues that the landlord must pay him the \$700.00 subsidy that the government paid to the landlord because he needed the money to pay his next landlord.

I find that this tenancy ended pursuant to section 44(1)(f), by the director's order following a mutual agreement to end the tenancy. The arbitrator, (the director's delegate), did not end the tenancy under section 44(1)(v), due to the landlord's notice to end tenancy for landlord's use of property under section 49 and made no factual finding regarding the merits of the landlord's application seeking the Order of Possession based on the notice to end tenancy.

Compensation under section 51 is contingent upon a tenancy ending under section 49. As this tenancy ended by mutual agreement under terms of settlement agreed at a dispute resolution hearing, the tenancy ended under section 44(1)(f), not pursuant to section 49. Consequently, the landlord is under no obligation to compensate the tenant with the equivalent of a month's rent pursuant to section 51(1) or 12 month's compensation pursuant to section 51(2). Whether the landlord used the rental unit for the stated purpose of the notice to end tenancy is irrelevant, as the tenancy did not end based on the notice to end tenancy but by mutual agreement. This portion of the tenant's application is dismissed without leave to reapply.

I also dismiss the tenant's application seeking the \$700.00 submitted to the landlord by the government agency. The money was sent to the landlord to supplement the tenant's rent for July, 2021 and I have insufficient evidence from the tenant to satisfy me the tenant is entitled to have it returned to him. There was no evidence presented to me to indicate the tenant notified the government agency that they were to discontinue sending cheques to the landlord or that the landlord was not entitled to be compensated for July's rent. Once again, I have insufficient evidence from the tenant to satisfy me that he paid rent to the landlord for June or July. As the onus is on the applicant to prove their version of the facts is most likely to be true, I find the tenant has failed on this point.

Lastly, the tenant seeks to be compensated with a doubled return of the security deposit pursuant to section 38 which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

At the hearing, the tenant was unable to verify when he gave the landlord his forwarding address. The landlord testified that he knew the building where the tenant had relocated to but did not know the unit number. During the hearing, the tenant confirmed that his address stated on the Notice of Dispute Resolution Proceedings is where he currently resides.

Based on the tenant's inability to provide sufficient evidence regarding when he gave the landlord his forwarding address, I determine that the tenant's forwarding address was provided to the landlord on today's date, as reflected on the Notice of Dispute Resolution Proceedings. The landlord is to comply with section 38(1) of the Act and

must within 15 days, 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. The 15-day period to do so commences today, April 24, 2023.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed without leave to reapply.

The landlord is ordered to comply with section 38(1) of the Act within the next 15 days commencing April 24, 2023.

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: April 24, 2023

Residential Tenancy Branch