



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's application for compensation equivalent to one month's rent for landlord's use of property and return of the security deposit. Both parties appeared at the party and were provided an opportunity to be heard and respond to the other party's submissions.

At the commencement of the hearing, the tenant testified that the security deposit had been returned to him on his last day of tenancy and that portion of the tenant's application was withdrawn.

Approximately 10 minutes after the teleconference call began, the tenant became angry and hung up the phone. The landlord continued to provide evidence without the tenant present and the conference call was ended approximately five minutes later.

Issues(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord?

Background and Evidence

Upon hearing undisputed testimony of the parties, I find that the tenant was served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) dated February 28, 2009. The Notice had an effective date of April 30, 2009 and indicated the reason for ending the tenancy was that the landlord had all the necessary permits and approvals required by law to demolish or repair the rental unit in a manner that requires

vacant possession. The tenant vacated the rental unit April 30, 2009 and the residential property was demolished in the few weeks that followed.

The tenant testified that he was not compensated the equivalent of one month's rent as he is entitled to receive upon receiving a 2 Month Notice. The landlord testified that the landlord contacted the Ministry of Housing and Social Development March 9, 2009 to advise that the tenant's rent payment for April 2009 need not be paid due to the issuance of the 2 Month Notice.

As evidence, the tenant provided a copy of a Notice of Deposit from the Ministry of Employment and Income Assistance showing that \$235.00 was deposited to the tenant's bank account on March 25, 2009. The tenant testified that the rest of his monthly income assistance must have been sent to the landlord as for rent. Upon asking the tenant why he did not produce a detailed accounting of how his income assistance was dispersed, the tenant became angry and hung up the telephone.

I continued to hear evidence from the landlord after the tenant hung up the telephone. The landlord provided oral testimony that she received a letter from the Ministry of Housing and Social Development dated April 16, 2009 confirming that the Ministry had not paid rent to the landlord for the month of April 2009 for seven tenants of the residential property, including the tenant that made this application. The landlord read from the letter during the hearing and offered to send it to me as evidence after the teleconference call. The landlord was advised not to send evidence to me that was not been served upon the other party.

Analysis

A tenant that receives a 2 Month Notice under section 49 of the Act, is entitled to receive compensation equivalent to one month's rent under section 51(1) of the Act.

Residential Tenancy Branch
Ministry of Housing and Social Development

Section 51(1.1) permits a tenant to withhold rent for the last month of occupancy in satisfaction of the compensation owing to the tenant.

I found the landlord's testimony credible and I fully accept that the landlord did not receive rent for the month of April 2009 from the tenant or on behalf of the tenant. I did not find the tenant's documentation and oral testimony to sufficiently satisfy me that the landlord received rent from the tenant or on behalf of the tenant for the month of April 2009. It is reasonable to expect that a detailed breakdown of the tenant's income assistance for the month of April 2009 would have been obtainable by the tenant had he requested it and I find the tenant's documentary evidence that was provided for my review to be insufficient in light of the landlord's evidence to the contrary.

In light of the above, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application has been dismissed without leave to reapply.

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 16, 2009.

Dispute Resolution Officer