

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (Act), regulation or tenancy agreement and a Monetary Order to recover the filing fee.

I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act?

Background and Evidence

This tenancy started on September 01, 2009. Both parties agree that this was a fixed term tenancy due to end in April 2010. The tenants' share of rent for this unit was \$405.00 per month and was due on the first of each month. The tenant shared this basement suite with three other tenants; each tenant had a separate tenancy agreement with the landlords.

This tenant testifies that she received a Two Month Notice to End Tenancy on October 07, 2009. This Notice gave a date to vacate the rental unit on December 10, 2009. The reason given on the Notice was that the rental unit will be occupied by the landlord, the landlords spouse or a close family member of the landlord or the landlords' spouse. The tenant did not dispute this notice.

The tenants' submissions state that she met with the landlords and notified them that she and her roommates had found a new place to live and would be able to move out on October 31, 2009. The tenants' submissions state that the landlords thanked her and gave their approval. The tenant states in her written submissions that she requested the compensation for tenants for the Two Months Notice but the landlords refused. On October 26, 2009 the tenant received an e-mail from the landlord for all the tenants that confirmed their move out date of October 31, 2009.

The tenant has provided an e-mail that was sent to the landlords on October 26, 2009 in response to the landlord's e-mail of the same date. This e-mail thanks the landlords and assures them the tenants will attend to all the details the landlords requested in their e-mail. It also confirms that the tenants will vacate the unit on the Saturday and return to do the final clean and hand the keys back to the landlords.

On November 02, 2009 the tenant states that the landlords came to her new residence and handed the tenants a 10 day Notice to End Tenancy for unpaid rent.

The landlords confirm the Two Month Notice was served to the tenant on October 07, 2009. The landlords agree that they had a meeting with this tenant on October 25, 2009 who informed them that she and the other tenants would be moving from the rental unit on October 31, 2009. The landlords state that the tenants did not give them written 10 days notice to vacate the rental unit before the date given on the Two Month Notice to End Tenancy.

The landlord has provided a hand written letter from the tenants dated October 31, 2009 which discusses the fact that the landlords did not receive the e-mails sent to them and confirming that the tenants have moved most of their belongings out and would meet with the landlords to return the keys and settle the damage deposits and compensation.

The landlords agree that this was a fixed term tenancy but the tenants agreed to move from the rental unit.

Analysis

The landlords served the tenant with a Two Month Notice to End Tenancy for the landlord's use of the property. Section 51 of the Act states:

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.

Section 50 of the Act states:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) 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, and

A notice under this section does not affect the tenant's right to compensation under section 51 of the Act. And by giving the tenants a two Month Notice the landlords are still obligated to pay the tenant the equivalent of one month's rent.

In this instance I find the tenant did not give the landlords 10 days written notice to end the tenancy, but did give the landlord a written note dated October 31 on the day all the tenants moved out. As the 10 days would have started from this date the earliest the tenant could have ended the tenancy would be November 10, 2009. It is my decision therefore that the tenant owes rent to the landlord for 10 days in November, 2009 and the remainder of the month would be the compensation she would be entitled to for the Two Month Notice pursuant to sections 50 and 51 of the Act.

As the tenant has been partially successful with her claim I find she is entitled to recover the \$50.00 filing fee from the landlords pursuant to section 72(1) of the Act.

The tenant is entitled to a Monetary Order against the landlords for the following amount:

Compensation for the Two Month Notice	\$405.00
Less 10 days credited for the 10 day notice	(-\$135.00)
Total amount due to the landlords	\$320.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$320.00** pursuant to section 67 of the *Act*. The order must be served on the respondents and is enforceable through the Provincial Court as an order 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: March 09, 2010.

Dispute Resolution Officer