



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Prior to the hearing, the landlord sent written authorization to allow his wife to act as his agent in this matter.

The landlord's wife (the landlord's agent) testified that she handed the tenants a 2 Month Notice to End Tenancy for Landlord Use of Property (the 2 Month Notice) on May 15, 2011. The female tenant (the tenant) testified that on June 20, 2011 she handed a written 10 Day Notice to End Tenancy to the landlord's agent advising the landlord that the tenants were planning to end their tenancy by June 30, 2011. This date was one month earlier than the July 31, 2011 end to this tenancy that resulted from a June 14, 2011 decision and order of another Dispute Resolution Officer. The landlord testified that she did not receive the tenants' written notice to end this tenancy early until she found it in her mailbox on June 28, 2011.

The landlord's agent confirmed that she received the tenants' original dispute resolution hearing package in her mailbox on August 3, 2011. I am satisfied that the landlord received this original hearing package in which the tenants were seeking a monetary award of \$860.00.

The landlord's agent testified that she also received an amended application for dispute resolution on November 2, 2011, in which the tenants increased the amount of their application for dispute resolution to \$2,560.00. This application was mailed to the landlord. Although she did receive this amendment, the landlord's agent said that she did not have enough time to enter written evidence that she had to contest the tenants' amended application. The landlord's agent also testified that she did not receive the tenants' six-page written evidence package.

The Residential Tenancy Branch (RTB) has no record of having received an amended application for dispute resolution increasing the amount of the tenants' requested monetary award from \$860.00 to \$2,560.00. The tenants' original application was for a monetary award equivalent to one month's rent for the landlord's failure to compensate the tenants for their last month's rent due to the landlord's issuance of the 2 Month Notice. The additional amount of the tenants' requested monetary award was for a payment pursuant to section 51(2) of the *Act* for the alleged failure of the landlord to use the rental unit for the purpose stated in the 2 Month Notice within a reasonable period after the effective date of the notice.

Under these circumstances, I found that the tenants had not provided the landlord with a proper opportunity to address the revised case against the landlord. In this case, the principles of natural justice would not enable me to proceed with a hearing of the tenants' amended application. The tenants had not provided some of their written evidence to the landlord in advance of this hearing and the RTB had no record of the tenants having submitted an amended application for dispute resolution for consideration at this hearing. For these reasons, I dismissed the tenants' request to have their amended application for dispute resolution considered as part of this hearing. The tenants are at liberty to submit a new application pursuant to section 51(2) of the *Act* with respect to this tenancy.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to compensate them for one month's rent payable under the tenancy agreement in accordance with section 51(1) of the *Act*? Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This month-to-month tenancy commenced on September 1, 2010. Monthly rent was set at \$850.00, payable in advance on the first of each month. The parties agreed that the landlord has returned the tenants \$425.00 security deposit paid on or about September 1, 2010.

The tenant testified that after giving written notice to end this tenancy the tenants vacated the rental unit by June 28, 2011. She said that the tenants gave the landlord the key to this rental unit on July 1, 2011. At that time, the landlord returned the tenants' security deposit, and post-dated cheques for July and August 2011. In the original application for dispute resolution before me in this hearing, the tenants applied for a monetary award of \$860.00. The tenants maintained that the landlord had

not properly compensated them pursuant to section 51(1) of the *Act* for one month's rent as a result of the landlord's issuance of the 2 Month Notice for Landlord Use of the Property.

The landlord's agent testified that the landlord had foregone rent owing for July 2011 to comply with section 51(1) of the *Act*.

Analysis

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) to 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 50(3) of the *Act* states that "a notice under this section does not affect the tenant's right to compensation under section 51."

Section 51 of the *Act* reads in part as follows:

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...*

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount...

In this case, the parties provided conflicting testimony regarding the tenants' service of their notice to end their tenancy early. The tenant did not have any witness to attest to her handing the letter to the landlord's wife. The landlord had no witness to attest to having received the tenant's notice to end this tenancy early by finding it in her mailbox. Although the tenant said that she handed the written notice to the landlord's agent on June 20, 2011, I find that the date on the written notice entered into evidence by the tenant is June 29, 2011, and not June 20, 2011, as maintained by the tenant. When questioned about this, the tenant said that the date on the written notice was actually June 20, 2011. She also noted that the landlord confirmed having received the tenant's written notice on June 28, 2011.

While I agree that there is an inconsistency between the date that the landlord said that she received the notice and the June 29, 2011 date on the letter, I find on a balance of probabilities that the date on the letter is the best evidence that notice was not provided 10 days in advance of the tenants' early end to this tenancy. I find that this date is

unmistakably June 29, 2011. Whether the tenant placed this written notice in the landlord's mailbox on June 28 or June 29, I find that notice to end this tenancy early did not occur within 10 days of the end of June 2011. The tenant also testified that she did not give the keys to the rental unit to the landlord until July 1, 2011, the day after the effective date noted in her written notice to end this tenancy early. I find that this tenancy did not end until the tenants returned the keys to the landlord and transferred vacant possession to the landlord. For these reasons, I find that the tenants did not take the appropriate measures to end their tenancy before July 1, 2011, and avoid responsibility for paying rent for July 2011.

Under these circumstances, the landlord would normally be entitled to rent for the month of July due to the tenants' late provision of their 10 day notice to end their tenancy early and their late end to this tenancy. However, I find that the landlord's return of the tenants' post-dated rent cheque for July 2011 was in accordance with section 51(1.2) of the *Act*. Consequently, I find that the landlord has complied with the duty to compensate the tenants for one month of rent that would otherwise be owed by the tenants for July 2011. I dismiss the tenants' application for a monetary award for the landlord's failure to comply with section 51 of the *Act* without leave to reapply.

As the tenants have not been successful in their application, they bear the costs of their filing fee for this application.

Conclusion

I dismiss the tenants' application for a monetary award for the landlord's failure to comply with the provisions of section 51 of the *Act* without leave to reapply.

I dismiss the tenants' application for recovery of their filing fee.

I find that the tenants have not properly amended their application for dispute resolution to include an application for a monetary award pursuant to section 51(2) of the *Act* and are at liberty to apply for a monetary award for this item.

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: November 07, 2011

Residential Tenancy Branch