



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order for money owed or compensation for damage or loss.

The tenant and the landlord appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to receive a monetary order under section 67 of the Act?

Background and Evidence

This month to month tenancy began on June 1, 2011, ended on November 13, 2011, monthly rent was \$750.00 and the tenant paid a security deposit of \$375.00 at the beginning of the tenancy. The security deposit has been returned to the tenant.

The tenant's monetary claim is in the amount of \$1,125.00.

In support to her application, the tenant submitted that she is entitled to receive her November rent, which was paid to the landlord, as a result of receiving a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"). The testimony and evidence shows that the landlord issued the Notice on October 19, 2011, for an effective move out date of December 30, 2011.

According to the tenant, as a result of receiving the Notice, the tenant issued the landlord a written notice on November 2, 2011, that she was vacating the rental unit on November 15, 2011. The tenant submitted that the rent for November had been paid.

The tenant also contended that she left as a result of the harassment by the landlord and his son, which led her to reside with her mother sometime in October, 2011.

The tenant's relevant evidence included a copy of the letter, which the landlord confirmed receiving.

The landlord submitted that the moving was self-induced and that the police reports confirm that there was no harassment by the landlord.

The landlord also confirmed that the rent for November 2011 had been paid.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the tenant in this case, has the burden of proving her claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Under Section 51 of the *Act*, a tenant who receives a notice to end 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.

The tenant testified and the landlord confirmed that the tenant has not received compensation equivalent to one month's rent after receiving the Notice which was issued to her under authority of Section 49 of the *Act*, either by direct payment or withholding rent for a month.

I therefore find that the tenant is entitled to receive the equivalent of one month's rent as a result of receiving the 2 Month Notice, in the amount of **\$750.00**.

Under section 50 of the Act, a tenant is entitled to end the tenancy earlier than the effective date of the Notice by issuing 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.

Under section 50 (2), if the rent has been paid by the tenant before giving notice, the landlord must refund any rent paid for a period after the effective date.

I therefore find that the tenant is entitled to compensation for the portion of November that rent was paid past the effective date of the notice, November 15, 2011, in the amount of the effective daily rate, **\$369.90**. For clarification, the amount is derived from the monthly rent of \$750.00 x 12 months ÷ 365 days = \$24.66. November 16- 30 = 15 days x \$24.66)

Conclusion

I therefore find that the tenant has established a **monetary claim** in the amount of **\$1,119.90**, comprised of the equivalent of one month's rent, in the amount of **\$750.00**, and the prorated amount of rent for November 16-30, 2011, as described above, in the amount of **\$369.90**.

I am enclosing a monetary order for \$1,119.90 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the landlord fail to comply with this monetary order.

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: January 27, 2012.

Residential Tenancy Branch