



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, seeking an order for monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Only the Tenant appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that she served the Landlords with the Notice of Hearing, the Application and her evidence by registered mail, sent on October 10, 2012, by registered mail. Documents served by mail are deemed served five days later under the Act. The Tenant testified that Canada Post tracking information indicates the Landlords received this mail on October 11, 2012. Based on the above, I find the Landlords were duly served in accordance with the Act.

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.

Preliminary Matter

The Tenant sought to make further submissions in writing on the day of the hearing. I explained to the Tenant that she was required to provide evidence to the Branch and Respondents five business days before the hearing, and I would not allow the late documents into evidence. However, the Tenant was allowed to testify and provided her submissions orally.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlords?

Background and Evidence

This tenancy began on December 15, 2009, with the parties entering into a written, standard form tenancy agreement. The rent was established at \$1,400.00 per month, and the Tenant paid a security deposit of \$700.00. According to the evidence before me, the security deposit has already been dealt with by the parties.

The Tenant testified that the Landlords contacted her by telephone on June 24, 2012. The Landlords informed her that they were intending on issuing the Tenant a two month Notice to End Tenancy for their use of the rental unit, to be effective on September 1, 2012. One of the Landlords intended on moving back into the rental unit.

The Tenant testified that in the phone conversation of June 24, 2012, the Landlords offered to pay the Tenant the sum of \$2,100.00, the equivalent of 1½ months of rent, if the Tenant could move out by August 1, 2012.

On June 29, 2012, the Tenant wrote the Landlords a letter and informed them that she would be moving out of the rental unit on July 2, 2012, as she found a different rental unit. In this letter the Tenant also informs the Landlords that,

“... absent any documentation from yourself that would enable the *Act*, please be advised that I will be withholding the rent for July pursuant to S. 51.1 of the *Act*, and the remaining monies can be forwarded within 15 days to my new address...”

[Reproduced as written.]

The Tenant also notes in this letter that the Landlords have not provided her with the proper, or any written form, for the two month Notice to End Tenancy for the Landlords' use of the rental unit.

On June 30, 2012, one of the Landlords wrote the Tenant a note, acknowledging and confirming the end of the tenancy on July 2, 2012, and “the remuneration”.

On July 4, 2012, one of the Landlords wrote a letter to the Tenant confirming that,

“... as discussed, you have accepted our offer of July's rent of \$1,400.00 plus a half a month's rent of \$700.00, for a total of \$2,100.00 if you were agreeable to vacate the suite by August 1, 2012.

“Further to your correspondence of June 29, 2012, we understand that you have withheld the rent for July (\$1,400.00). As such, and further to our agreement, we

enclose a cheque in the amount of \$700.00 which represents the remaining money owed to you.”

[Reproduced as written.]

The Tenant argues that she vacated the rental unit in good faith and in reliance on the Landlords' assertions they were going to provide her with the approved written form for the Landlords to end the tenancy with. She argues the Landlords were required to pay her \$2,100.00, or 1 ½ months of rent, if she vacated the rental unit by August 1, 2012, and they have only paid her \$700.00, or ½ month of rent.

Analysis

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

In these circumstances, under section 52 of the Act, the Landlords were required to provide the Tenant with a two month Notice to End Tenancy if they intended to move back into the rental unit. Section 52 required the Landlords to use an approved form for this. The Landlords failed to provide written notice in any form. In these circumstances, the Tenant was not required to vacate the rental unit.

Nevertheless, it does appear from the writings of the parties that they formed an agreement that the tenancy would end on July 2, 2012. However, I am unable to conclude that the parties had formed an agreement as to the form of compensation and how it would have been paid. Based on the written portions of their correspondence, I find that they did not come to terms on the form of the payment of the Landlord to the Tenant.

Under section 51 of the Act, had a two month Notice to End Tenancy been issued to the Tenant, the Tenant would have been entitled to the equivalent of one month of rent in compensation.

In these circumstances, I do find that the Tenant relied on the Landlords' assertion they would end the tenancy in accordance with the Act. Therefore, I find that the Tenant is entitled to the compensation equivalent to one month of rent. As the Landlords' have paid ½ a month of rent to the Tenant, I order them to pay a further ½ month of rent and the filing fee for the Application to the Tenant.

Therefore, I grant the Tenant a monetary order in the amount of **\$750.00** payable by the Landlords forthwith. This order may be filed and enforced in the Provincial Court, if the Landlords refuse to pay the Tenant.

Conclusion

The parties came to an agreement to end the tenancy on July 2, 2012. However, I am unable to find they had an agreement as to the form of the compensation payable to the Tenant.

In these circumstances, I find that the Tenant relied on the Landlords to end the tenancy in accordance with the Act, and therefore, the Tenant is entitled to the equivalent of one month of rent, as described in section 51 of the Act. As the Landlords have paid ½ of this amount, I order them to pay the Tenant the remainder, plus her filing fee for the Application, in the amount of \$750.00

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 21, 2013.

Residential Tenancy Branch