



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MNDC, MNSD, OLC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking to cancel the Notice to End Tenancy, and obtain an order that the landlord comply with the Act. The tenant was also seeking a monetary order for one-month compensation to the tenant for termination of the tenancy for Landlord Use as well as the return of the security deposit paid.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

At the outset of the hearing, the parties advised that the tenant had already vacated the unit. Therefore the tenant's request to cancel the Notice to End Tenancy for Landlord's Use is moot. However, the monetary claim against the landlord will proceed.

Issue(s) to be Decided

- Is the tenant entitled to receive a monetary order for damages and loss?
- Is the tenant entitled to the return of the security deposit?

Background and Evidence

The tenancy began in May 2013 and the rent was set at \$750.00 per month. \$380.00 was paid as a security deposit and this amount is still being held in trust by the landlord on behalf of the tenant.

Submitted into evidence, by the tenant, are copies of communications from the landlord to the tenant. A letter was also submitted into evidence by the landlord, but was never properly served on the tenant in advance of the hearing as required under the Residential Tenancy Rules of Procedure and, therefore, will not be considered for that reason.

The tenant testified that, on July 31, 2013, the landlord issued a letter purporting to be a Notice to end Tenancy, effective September 1, 2013. The tenant testified that the landlord's letter was not a valid Notice under the Act. In evidence was a copy of this letter excerpted below:

"I am very sorry to inform you that I have sold the trailer. Therefore I will have to ask you to move by Sept 1, 2013...."

The tenant testified that, after they received the letter purporting to be a Notice to end the tenancy, they voluntarily moved out.

The tenant testified that, although the landlord did not follow the Act by using the correct Two Month Notice to End Tenancy for Landlord's Use form as required, the landlord did evict them for landlord use and thus is required under the Act to compensate the tenant the equivalent of one month rent.

The tenant is claiming \$750.00 in compensation representing the equivalent of one month under section 51 of the Act.

The tenant is also seeking a refund of their \$380.00 security deposit.

Analysis

Ending the Tenancy

I find that the Act provides that a tenancy remains in effect until such time it is properly ended under section 44 of the Act. I find that the landlord issued a letter purporting to terminate the tenancy for landlord's use.

Section 49 does allow a landlord to terminate a tenancy for landlord's use. A Notice under this section must end the tenancy on a date that is not earlier than 2 months after the date the notice is received, and must be effective the day before the day in the month that rent is payable under the tenancy agreement.

However, section 52 of the Act states that, in order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) **when given by a landlord, be in the approved form.**(My emphasis)

In this instance, I find that the landlord's Notice did not comply with the Act. However, the tenant did vacate in accordance with the flawed Notice.

Section 51(1) of the Act states that 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. The Act also states that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent. For the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

In this instance, I find that, under section 51(1) of the Act, the tenant would be entitled to receive or withhold \$750.00. Therefore, I find that, the tenant is entitled to receive compensation in the amount of \$750.00.

Security Deposit

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit without an order to permit the landlord to keep it. Section 38 of the Act requires that a landlord either return the security deposit within 15 days or make an application for dispute resolution for an order to retain the deposit for damages and loss. .

Accordingly I find that the tenant is entitled to receive a refund of \$380.00, for the security deposit.

The total compensation to which the tenant is entitled is \$1,180.00, comprised of \$750.00 for the equivalent of one month compensation under section 51 of the Act, \$380.00 for the tenant's security deposit and the \$50.00 cost of the application.

I hereby grant the tenant a monetary order in the amount of \$1,180.00. This order must be served on the respondent and may be enforced through Small Claims Court as an order of that Court if necessary.

Conclusion

The tenant is successful in the application and is granted a monetary order for compensation under section 51 of the Act and a refund of the security deposit.

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: September 18, 2013

Residential Tenancy Branch

