



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking a monetary order for one-month compensation to the tenant for termination of the tenancy for Landlord Use.

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.

Issue(s) to be Decided

Is the tenant entitled to receive a monetary order for compensation under section 51 of the Act, termination of the tenancy for landlord's use?

Background and Evidence

The tenancy began in September 2010 and the rent was set at \$1,600.00 per month. A security deposit of \$800.00 was paid, but was refunded at the end of the tenancy.

The tenant testified that the tenancy ended on August 31, 2011 after they received a letter from the landlord asking the tenants to move out because the landlord intended to occupy the unit. The tenant testified that that, although the landlord did not issue a proper Two Month Notice to End Tenancy for Landlord's Use, on the approved form, the tenants decided to accept the termination for landlord's use, with the understanding that they would receive the equivalent of one month rent in compensation, as required under the Act when a landlord terminates a tenancy for landlord's use.

The landlord testified that the tenants vacated and he did move into the rental unit. The landlord pointed out that the tenants did not produce a copy of the landlord's Notice to Vacate or any correspondence relating to this in their evidence.

Although the landlord could not verify what agreement, if any, was reached between the parties, the landlord stated that he accepted that the equivalent of one-month rent is likely owed to the tenant.

The landlord stated that he has also filed a dispute resolution claim against the tenant claiming compensation for utilities and damages which, according to the landlord, will be heard in February 2014.

The tenant is claiming \$1,600.00 in compensation from the landlord, representing the equivalent of one month under section 51 of the Act.

Analysis

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 communication purporting to terminate the tenancy for landlord's use and the tenants accepted the Notice and vacated.

Section 49 allows 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, although the landlord's termination notice was not in evidence, I find that the landlord's Notice did not comply with the Act, based on the testimony of both parties. I find that, regardless of the flawed format of the Notice, the tenant did accept it and vacated in accordance with the 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 \$1,600.00 in compensation. Therefore, I find that, the tenant is entitled under the Act to be paid \$1,600.00 plus the \$50.00 cost of filing this application, for total compensation of \$1,650.00.

With respect to the landlord's testimony regarding his own monetary claims against the tenant, for utilities and damages, which would be heard under section 67 of the Act, I find that these other claims are not relevant in any respect to the matter before me. The proceedings today pertain solely to compensation owed by the landlord, to the tenant, under section 51 of the Act. Therefore, the landlord's application is apparently scheduled to be heard separately on its own merits at a later date and this fact has no impact on these proceedings.

I hereby grant the tenant a monetary order in the amount of \$1,650.00. 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.

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 06, 2013

Residential Tenancy Branch

