



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR MNDC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to refund the balance of the rent pursuant to sections 49, 50 and 51 as the tenant ended the tenancy early after receiving a Notice under section 49; and
- b) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and the tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and personally with their 10 day Notice to End Tenancy. The landlord agreed they had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to a refund of rent pursuant to section 50 and to recover their filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said they were given a two month Notice to End their tenancy under section 49 of the Act as a purchaser intended to occupy the home. It was dated July 1, 2013 to be effective September 1, 2013. The month to month tenancy commenced on May 15, 2013, rent was \$550 payable on the first of each month and a security deposit of \$275 was paid. The tenant paid rent for July 2013 but was to be given a free month's rent for August 2013 under section 51 of the Act. However, the tenant exercised their right under section 50 to end their tenancy early and gave a 10 day Notice on July 29, 2013. They vacated on August 8, 2013. The landlord confirmed these facts were correct.

The tenant confirmed they had received a refund of their security deposit and the only matter in dispute is a proportionate refund of rent from August 9 to August 31, 2013 which they understand is an entitlement under section 50 of the Act.

The landlord said that the property had changed ownership on August 16, 2013 and they had done everything legally. They believe they are not responsible for the refund as they were no longer landlords as of August 16, 2013. The tenant said they had served this landlord as this landlord was their landlord during the relevant times. They did not know the purchasers and had no relationship with them.

In evidence is the Notice to End Tenancy. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The relevant sections of the *Residential Tenancy Act* provide:

Tenant's compensation: section 49 notice

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by

(a) 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, and...

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

I find the tenant is deemed to have paid rent for August 2013 according to the above provisions and therefore I find them entitled to a refund of rent from August 9, 2013 to August 31, 2013. Rent for August was \$17.74 a day (550/31) so I find them entitled to a refund of \$408.06 (23 days) from this landlord. Although the landlord contended they were no longer the landlord after August 16, 2013, I find they were the landlord during the relevant time of this tenancy, they received the 10 day Notice to End Tenancy from the tenants on July 29, 2013 and the tenants vacated on August 8, 2013 before the purchasers took over the property.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Refund of rent for 23 days	408.06
Filing fee for this application	50.00
Total monetary order to tenant	458.06

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: December 11, 2013

Residential Tenancy Branch

