



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for a prorated rent refund the tenant feels is owed to them under section 50 of the Act.

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, under section 50 of the Act, to a pro-rated refund of rent for early Notice to vacate?

Background and Evidence

The tenancy began March 15, 2013 and the tenant vacated pursuant to a Two Month Notice to End Tenancy for Landlord's Use issued by the landlord. The Notice to End Tenancy for Landlord's Use was dated January 31, 2014 and was effective July 31, 2012. However, on February 21, 2014, the tenant gave the landlord early notice to vacate effective March 5, 2014.

The tenant testified that they paid rent for February 2014. In regard to rent for March 2014, the tenant stated that, because they are entitled to receive the equivalent of 1 month free rent, when a Two-Month Notice is served, they allocated this compensation to the month of March 2014. The tenant's position is that, given that they only remained in the rental unit for 5 days during March 2014, they are therefore entitled under the Act to be reimbursed for the remaining 26 days of the month.

Submitted into evidence was a copy of a Two Month Notice to End Tenancy for Landlord's Use, tenancy agreement, copies of communications and written statements.

The tenant testified that they were aware that, under the Act, they are entitled to terminate the tenancy on 10 days Notice any time after receiving a Two Month Notice to End Tenancy for Landlord's Use. The tenant stated that they exercised this option but only received a refund of \$464.48, representing only 16 days rent abatement for March.

The landlord testified that they received guidance from an information officer at Residential Tenancy Branch in an email communication. The landlord stated that they were told that the tenant is only entitled to be compensated for the period from March 16 to March 30. A copy of this communication is in evidence.

The tenant seeks additional compensation for a 26-day period from March 6 to March 31, 2014.

Analysis

Section 49(5) provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. I find that the landlord issued a Two Month Notice to End Tenancy for Landlord's Use ending the tenancy effective March 31, 2014.

Section 51(1) requires that a tenant receive the equivalent of one month compensation by the landlord with a Notice to End Tenancy for Landlord Use. The tenant did not pay the \$900.00 rent for March 2014 and therefore I accept that the tenant was already credited the equivalent of one month free rent by the landlord.

Section 50 (1) of the Act states that once 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 has a right to end the tenancy earlier 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

(b) paying or owing the landlord, the proportion of the rent owed to the effective date of the tenant's notice, unless subsection (2) applies.

In the situation before me, I find that the tenant would only have been required to pay "*the proportion of the rent owed to the effective date of the tenant's notice*", which was 5 days rent valued at \$147.95. I find that the tenant is entitled to a total amount of \$752.05 for the 26 days after they surrendered the unit to the landlord.

I find that the landlord had only refunded \$464.48 and failed to refund the remaining \$287.57 still owed to the tenant.

Section 50(3) of the Act specifically states that a tenant's earlier notice under section 50 does not affect the tenant's right to one-month compensation under section 51 *[tenant's compensation: section 49 notice]*.

Based on the evidence and testimony, I find the tenant is entitled to further monetary compensation from the landlord in the amount of \$337.57 comprised of \$287.57 additional refund for the proportion of the month left after the tenant moved out in March and the \$50.00 cost of the application.

I hereby grant the tenant a monetary order in the amount of \$337.57. This Order is final and binding. It must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

Conclusion

The tenant is successful in the application and is granted monetary compensation under section 50 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: July 24, 2014

Residential Tenancy Branch

