



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 the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

The tenant and the landlord attended the telephone conference call hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's submissions, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-At the beginning of the hearing, the matter of documentary evidence evidence was discussed. The tenant's documentary evidence was 5 pages of written submissions submitted with his application, which the landlord confirmed receiving. The landlord stated that he submitted documentary evidence directly to the Residential Tenancy Branch ("RTB") front desk on or about July 29, 2014. The tenant confirmed receiving the landlord's evidence.

At this hearing, the landlord was allowed to testify about his evidence, with the understanding that he would fax his evidence after the hearing, by the close of business, and that if it was necessary to reconvene the hearing after I had received the evidence, I would adjourn this hearing.

It must be noted that the landlord did comply with the request to fax his evidence, and that it was not necessary to reconvene this hearing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The tenant stated that the tenancy began on June 1, 2012, and initially stated that it ended on May 3, 2014; however, the tenant's documentary evidence shows that the tenancy ended either on April 1 or 2, as he moved into his new accommodations on April 2, 2014, and the tenant agreed.

The tenant's monthly rent was \$1000.

The tenant's monetary claim is \$3050, which is the equivalent of 3 months' rent.

In support of his application, the tenant submitted that when paying the rent for March on February 21, 2014, the landlord verbally provided the tenant with a 2 month notice and said that the tenant would have to vacate the rental unit by April 30, 2014. The tenant submitted further that when he returned from a vacation on March 3, 2014, the tenant received a self-authored notice to vacate from the landlord.

The tenant submitted that the landlord made a passing comment that he still did not have the permits necessary to complete the renovations, the purpose for the tenant's eviction.

The tenant submitted that as the landlord violated the Act by not serving a proper 2 Month Notice to End Tenancy for Landlord's Use of the Property on the RTB form, and due to the fact the tenant was given the landlord's notice to vacate, he was entitled to compensation of 1 month's rent for having received the Notice. The tenant submitted further that he was also entitled to receive compensation equivalent to 2 months' rent as the landlord has not taken steps have not been taken to accomplish the stated purpose for ending the tenancy.

In response, the landlord agreed that he did not serve the tenant a proper, 2 Month Notice, and that he understood that the tenant was owed monetary compensation equivalent to 1 month's rent. The landlord submitted that he learned of his obligation

when speaking with a representative of the RTB, and that since that time, he has paid the tenant \$1000.

The tenant agreed that he had received this amount and that his monetary claim should be reduced by a commensurate amount.

Analysis

Section 51 of the Act provides as follows:

(1) A tenant who receives a notice to end 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.

Section 51(2) additionally provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy listed in the Notice within a reasonable time after the effective date of the Notice, or if the rental unit is not being used for the stated purpose, the tenant is entitled to the equivalent of 2 months' rent under the tenancy agreement.

In this case, the landlord did not serve or issue such a 2 Month Notice to the tenants; rather, the landlord informed the tenant that he would have to vacate by the end of April 2014, and the evidence shows that the tenant acted on this verbal notice by vacating by April 2, 2014.

Although the tenant mentioned a self-authored notice, the tenant failed to produce a copy of the notice for examination purposes.

Under the Residential Tenancy Act, a tenant cannot be compelled to vacate a rental unit at the verbal or otherwise written request of the landlord. The tenant therefore had the choice to stay and wait for the 2 Month Notice, if one was ever to be issued. Instead the tenant chose to secure alternate accommodations and informed the landlord he would vacate the rental unit by April 1, 2014.

As the tenant was not issued a 2 Month Notice, under section 49 of the Act, I find he is not entitled to the compensation he seeks and I therefore dismiss his monetary claim.

Although I would not have made the decision to grant the tenant compensation equivalent to 1 month's rent, the landlord has made such payment prior to this hearing and I therefore make no orders or determinations in that regard.

I also dismiss the tenant's request to recover the filing fee, as I have dismissed his monetary claim.

Conclusion

The tenant's application is dismissed.

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: August 14, 2014

Residential Tenancy Branch

