



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a monetary order for the equivalent of one month rent as compensation under section 51(1) of the Act, applicable when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued.

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 landlord required to pay the tenant the equivalent of one month compensation pursuant to section 51(1) of the Act?

Background and Evidence

The tenancy began on June 15, 2012 as a one year fixed term and then transformed to a month-to-month tenancy. The monthly rent was \$2,150.00.

The tenant testified that on June 28, 2014, the landlord gave the tenant verbal Notice that the landlord intended to move into the rental unit and followed this up with a written Notice July 23, 2014 stating that the tenancy was being ended because the landlord, or a close relative of the landlord, intended to occupy the unit.

The tenant accepted the Notice issued by the landlord and moved out on July 31, 2014, which was earlier than the effective date specified on the Notice.

The tenant testified that the landlord did not compensate the tenant the equivalent of one month rent as required under the Act. The tenant testified that the rent was paid up-to, and including, July 31, 2014, when the tenant moved out.

The landlord argued that the tenant was given generous notice that the landlord would be ending the tenancy to occupy the rental unit. The landlord testified that the tenant was given 3 months notice, an extra month beyond that required under the Act. The landlord also pointed out that the tenant's August 2014 rent cheque was returned to the tenant. The landlord testified that this was a month-to-month tenancy, not a fixed term. The landlord testified that the tenant left earlier than the effective date shown on the *Notice to End Tenancy for Landlord's Use*.

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.

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.

I find that the fact that the landlord gave an extra month's Notice and also refunded the tenant's post-dated cheque for the month *following* the end of the tenancy, not to be relevant considerations with respect to the landlord's obligation under section 51(1) of the Act to pay compensation to the tenant. In regard to this tenancy being a month-to-month tenancy, I find that this fact has no effect on the compensation owed to the tenant for ending the tenancy for landlord's use.

Section 50 (1) of the Act states that, once a landlord has given a tenant notice to end a tenancy under section 49 [*landlord's use of property*], the tenant has a right to end the tenancy earlier with 10 days Notice. The Act specifically states that the tenant's choice to vacate earlier than the effective date shown on the Notice to End Tenancy for Landlord's Use, does not affect the tenant's right to receive the one month compensation under section 51(1) .

Given the above, I therefore, find that the tenant is entitled to be paid the equivalent ion one month rent, in the amount of \$2,150.00, by the landlord. I also find that the tenant is entitled to be reimbursed the \$50.00 cost of the application.

Based on the evidence and testimony, I hereby grant the tenant a monetary order in the amount of \$2,200.00. 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 a monetary order for compensation under section 51(1) 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: October 07, 2014

Residential Tenancy Branch

