



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein he sought compensation pursuant to section 51(1) of the Act as well as to recover the filing fee.

The hearing was originally set for January 16, 2015. Only the Tenant attended the hearing. He provided affirmed testimony and testified that he served the Landlord by regular mail. At that time I adjourned the hearing to permit the Tenant to serve the Landlord by registered mail.

The hearing reconvened on February 20, 2015. Again, only the Tenant attended. As the Landlord was not present, service of the Application materials was again considered. The Tenant testified that he served the Landlord by registered mail on January 31, 2015. Introduced in evidence was a copy of the registered mail receipt and tracking number. Based on the evidence filed and the Tenant's testimony, I find that the Landlord was sufficiently served.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for compensation pursuant to section 51(1)?
2. Is the Tenant entitled to recovery of the \$50.00 fee paid to file his application for dispute resolution?

Background and Evidence

The Tenant testified that the tenancy began December 2013. Monthly rent was payable in the amount of \$420.00 per month.

On April 30, 2014 the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property. As for the reasons for issuing the notice, the Landlord indicated that she had all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. The effective date of the notice was June 30, 2014.

The Tenant testified that the bathroom in the rental unit was full of black mold and required a complete demolishing. He stated that when he received the notice, he informed the Landlord that he would leave by the end of May 2014. The Landlord agreed to the tenancy ending on May 2014.

The Tenant paid rent for May 2014. Introduced in evidence was a copy of the receipt for payment. The Tenant says that he spoke to the Landlord about the required compensation of one month's rent and the Landlord said she would pay him, but that she needed to find another tenant. The Tenant presumed she was speaking of another rental as he did not believe she was intending to re-rent his rental unit.

Analysis

Section 51 provides that when a landlord issues a 2 month notice to end tenancy pursuant to section 49, that a tenant is entitled to receive from the landlord one month's rent. Section 51 reads as follows:

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.
- (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

In this case, the Tenant did not withhold the May 2014 rent, and as such the Landlord must refund that amount pursuant to section 51(1.2). I find that the Tenant is entitled to a Monetary Order, pursuant to section 67 of the Act, in the amount of \$470.00 which includes the refund of the Tenant's rent payment for May 2014 as well as the filing fee paid by the Tenant.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant is entitled to a Monetary Order for compensation under section 51 of the Act. The Landlord shall refund the Tenant's rent payment for May 2014 in the amount of \$420.00. The Tenant is also entitled to recover the filing fee.

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: February 20, 2015

Residential Tenancy Branch

