



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This is an application for a monetary order for \$900.00, and a request for recovery of the \$50.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Is the respondent landlord required to pay the tenant the equivalent of one month's rent as compensation for serving the tenant with a two month Notice to End Tenancy for landlord use?

Background and Evidence

On May 22, 2014 the landlord served the tenant with a two month Notice to End Tenancy for landlord use, and the tenant vacated the rental unit on June 1, 2014.

The landlord subsequently sent the tenant a cheque for \$636.00 and deducted off monies that she believed the tenant owed for rent and Hydro.

The tenant has not cash that cheque and is requesting that the landlord pay the full \$900.00 required under the Residential Tenancy Act, and does not agree with any deductions, as she does not believe she owes any further money for rent or Hydro.

Analysis

The landlord gave the tenant a section 49 Notice to End Tenancy for landlord use and therefore pursuant to section 51, the landlord is required to pay compensation equivalent to 1 months' rent, to the tenant.

The landlord believes that she has complied with the Act, as she has paid the tenant \$636.88 based on the compensation amount of \$900.00 minus money she believes she is owed by the tenant as rent for over holding, and for outstanding Hydro utility bill.

I have reviewed the landlord's documentation and I understand how she arrived at the amount she withheld; however there is nothing in the Residential Tenancy Act that allows the landlord to unilaterally deduct any money from the compensation that is required to be paid to the tenant.

Had the tenant agreed to the deduction that would be a different matter; however, in this case, the tenant does not agree to any deductions and actually disputes the amounts, and therefore the landlord does not have the right to make any deductions.

If the landlord believes she has a claim against the tenant for over holding or for outstanding utilities, the landlord has the right to apply for dispute resolution to have an Arbitrator determine the validity of that claim, however as stated above she did not have the right to unilaterally withhold the money.

Therefore since the landlord has not paid the tenant the equivalent of one month's rent as required under section 51 of the Residential Tenancy Act, I have allowed the tenants claim against the landlord.

I also allow the request for recovery of the \$50.00 filing fee.

Conclusion

I have issued an Order for the respondent/landlord to pay \$950.00 to the applicant/tenant. As stated previously the landlord has sent the tenant a cheque for \$636.88, and therefore if that cheque is still negotiable, that will satisfy \$636.88 of the Order that was issued against the landlord.

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 25, 2015

Residential Tenancy Branch

