



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on September 16, 2014 for return of her security deposit and for money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement.

The Tenant appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance by the Landlord for the 15 minute hearing or any submission of written evidence. Therefore, I turned my mind to the service of the Tenant’s Application and the Notice for Hearing documents.

The Tenant testified that she served the Landlords the documents for this hearing by registered mail on September 23, 2014. The Tenant provided the Canada Post tracking number into oral evidence which was noted on the inside of the file. The Canada Post website indicates that the Landlord received and signed for the documents on September 26, 2014. Based on the Tenant’s undisputed evidence, I find the Tenant completed service of the required documents by mail, pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Tenant.

Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation under Section 51 of the Act?
- Is the Tenant entitled to the return of her security deposit?

Background and Evidence

The Tenant testified that this month to month tenancy started in approximately November 2013. A written tenancy agreement was completed which required the Tenant to pay rent in the amount of \$600.00 on the first day of each month. The Tenant

provided the Landlord with a \$300.00 security deposit at the start of the tenancy and the Tenant testified that this still has not been returned to her by the Landlord.

The Tenant testified that on July 28, 2014, she was served with a letter from the Landlord. The letter dated July 28, 2014 states in part:

“Please be advised that any and all rental agreements are terminated. This is giving SIXTY days notice to remove all personal property from [rental unit address]”

[Reproduced as written]

The Tenant explained that she took this as a two month notice to end the tenancy which requires the Landlord to compensate her one month's free rent. The Tenant testified that she contacted the Residential Tenancy Branch who informed her that the letter should be issued by the Landlord on the approved form as required by the Act before she is required to vacate the rental unit.

The Tenant testified that she contacted the Landlord shortly after being served with the letter who then informed her that the rental unit had been sold. The Tenant explained that as a result, she vacated the rental unit on August 28, 2014. The Tenant testified that she did ask the Landlord for a proper 2 month notice to end the tenancy; instead the Landlord served her with a 10 Day notice for unpaid rent in the amount of \$400.00 on August 28, 2014.

The Tenant stated that by this time she had already found and committed to another place to move to and moved out of the rental unit on the same day she got the 10 day notice. The Tenant testified that she had paid rent for August 2014 and could not understand why the Landlord had served her with the 10 day notice.

The Tenant testified that she provided the Landlord with her forwarding address in writing by mail. The Tenant did not provide any evidence in relation to serving the Landlord with a forwarding address. However, pursuant to Rule 3.19 of the Rules of Procedure, I allowed the Tenant to provide a copy of this to me after the hearing had concluded. The Tenant did provide the document but I note that it was dated as served on September 18, 2014, being two days after she had made her Application.

The Tenant testified that she has not received her security deposit from the Landlord and neither has she received any compensation payable to her as a result of the Landlord ending her tenancy because he had sold the rental unit. The Tenant now seeks to recover one month's rent and her security deposit back from the Landlord.

Analysis

I first turn my mind to the Tenant's Application for the return of her security deposit. Section 38(1) of the Act states that, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it.

In considering the Tenant's evidence of the forwarding address, the Act requires that a period of 15 days elapse before the Tenant can make an Application to claim the return of the security deposit from the Landlord. As the Tenant provided the Landlord with a forwarding address in writing after she made her Application, the provisions of the Act with respect to providing the Landlord with a forwarding address had not been met. As a result, I find when the Tenant made her Application for the return of her security deposit, it was premature. Therefore, I am unable to deal with this portion of the Tenant's Application. However, I provide the Tenant leave to re-apply.

I now turn my mind to the Tenant's Application for monetary compensation under Section 51 of the Act. Section 49(7) of the Act states that if a landlord wants to end a tenancy for the landlord's use of the property, the landlord must issue the tenant with a notice in the approved form. The notice must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, and state the grounds for ending the tenancy.

In this case, I find that the Landlord did not issue the Tenant with a notice in the approved form. The Landlord's written notice to end the tenancy does not contain the warnings, cautions, the effective vacancy date, compensation requirements and details on how to dispute the notice that normally appear on the approved notice.

The Tenant acknowledged that she was informed by the Residential Tenancy Branch that she should get the proper approved notice before she took any action. However, I find that the Tenant proceeded to vacate the rental unit without being served with an approved notice or a notice that contained the relevant information as required by Section 52 of the Act.

Furthermore, when the Tenant did request the Landlord for the approved form, the Tenant was served with a 10 Day notice which the Tenant had a right to dispute in order to cancel the notice if she had indeed paid rent. Instead, I find the Tenant acted prematurely and vacated the rental suite without waiting to be served with the proper notice that would have entitled her to compensation. Therefore, I find that under these

circumstances the Tenant is not entitled to the compensation she claims from the Landlord.

Conclusion

The Tenant's Application for monetary compensation under the Act is dismissed without leave to re-apply. The Tenant's Application for the return of her security deposit is premature and is dismissed with leave to re-apply.

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: April 24, 2015

Residential Tenancy Branch

