



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

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 February 4, 2015 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), and to recover the filing fee from the Landlord.

Both parties appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application and confirmed that he had not provided any written evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation payable under the 2 month notice to end tenancy?

Background and Evidence

The parties agreed that this tenancy started on February 14, 2013 for a fixed term of one year after which it continued on a month to month basis. Rent under the written tenancy agreement was payable by the Tenant in the amount of \$2,300.00 on the first day of each month.

The Tenant testified that on October 15, 2014 he was personally served with a 2 Month Notice to End Tenancy for Landlord’s Use of the Property (the “Notice”) by the Landlord. The Notice was provided into written evidence and shows a vacancy date of December 31, 2015.

The Tenant testified that knowing his tenancy was going to end he searched for another rental. As a result, on October 24, 2014 the Tenant found a new place to move for November 2014.

The Tenant testified that he then sent a text message the Landlord on October 24, 2014 informing him that he had found a new place to move to and whether it was ok to move out at the end of the month. The Tenant testified that the Landlord replied to his text message 28 minutes later stating that he had no problem with this and that they would discuss the ending of the tenancy the next day. Although the Tenant did not provide these text messages into evidence, the Tenant testified that he had a copy of them and could produce them if there were in dispute.

The Tenant testified that the Landlord informed him at the end of the tenancy that he was not going to pay him the compensation. Therefore, the Tenant now seeks to recover this from the Landlord in the amount of \$2,300.00.

The Landlord testified that he had served the Notice in accordance with the instructions provided to him by the Residential Tenancy Branch because he needed the rental unit for his own use. When the Landlord was asked why he had not paid the Tenant the compensation required under the Notice, the Landlord submitted that he had not been provided with written notice by the Tenant.

The Landlord was asked whether he had received the text message from the Tenant and the Landlord hesitated stating that he could not recall but submitted that the Tenant would not lie about them and guessed he was telling the truth. The Landlord was also asked whether he had replied to the Tenant's text message with the response testified to by the Tenant during the hearing. Again the Landlord hesitated but responded stating that he may have done.

Analysis

I have carefully considered the evidence of both parties and make findings on the balance of probabilities as follows. Section 51(1) of the Act requires that a tenant who receives a Notice is entitled to receive from the Landlord an amount that is equivalent to one month's rent payable under the agreement.

I find the Landlord served the Tenant with a valid Notice that complied with the Act and it contained a correct vacancy date on the Notice. Therefore, under the Act, the Landlord is liable to give the Tenant one month's rent as compensation under the Notice in the amount of **\$2,300.00**.

Section 50 of the Act allows a tenant to end a tenancy earlier than the vacancy date of the Notice. If a tenant intends to end the tenancy earlier then Section 50(1) (a) of the Act requires the Tenant to give the Landlord at least ten days' written notice.

In this case, I accept the Tenant's evidence that the Tenant sent the Landlord a text message on October 24, 2014 advising that the tenancy was going to end at the end of October 2014. I also find that there is sufficient proof before me that the Landlord received the Tenant's text message as the Landlord responded to the Tenant by sending him a text message 28 minutes later confirming that there was no problem with this.

Therefore, I find that the Tenant's text message was sufficient evidence that the Landlord was put on notice in writing that the tenancy was going to end earlier than the vacancy date on the Notice. I find the Landlord's argument that he was not given written notice by the Tenant is an attempt at avoiding payment to the Tenant under Section 51 of the Act.

Furthermore, Section 50(3) of the Act states that the requirement for a tenant to give a written 10 day notice to end the tenancy early does not affect the tenant's right to compensation under Section 51 of the Act.

However, I do find that when the Tenant did send the Landlord a text message on October 24, 2015 and then moved out on October 31, 2015, this resulted in only seven days of written notice to the Landlord. Therefore, the Tenant would be liable for the remaining three days of rent that notice had not been given for in the amount of **\$222.58** ($(\$2,300.00 / 3) \times 3$).

The Act allows me to offset amounts payable to each party. Therefore, in this case, I find the Tenant's compensation payable by the Landlord should be offset with the amount of rent the Tenant would be liable for. As a result, I find the Tenant is to be awarded **\$2,077.42** ($\$2,300.00 - \222.58).

As the Tenant has been successful in this matter and had to make an Application to recover his compensation, I also award the Tenant the filing fee of **\$50.00** pursuant to Section 72(1) of the Act.

As a result, the Tenant is issued with a Monetary Order for a total amount of **\$2,127.42**. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if payment is not made. Copies of this order are attached to the Tenant's copy of this decision.

Conclusion

The Landlord has failed to pay the Tenant compensation payable under the Act as a result of the Landlord's ending the tenancy. Therefore, I grant the Tenant a Monetary Order for this compensation and recover of the filing fee in the amount of **\$2,127.42**.

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 17, 2015

Residential Tenancy Branch

