



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and landlord participated in the conference call hearing. Upon commencement of the hearing the landlord's son-in-law ("AB") identified himself as a witness and indicated he was calling from out of town. AB did not know the number he was calling from and in an effort to simplify matters I asked the tenant whether she had any objection to AB remaining on the line for the duration of the hearing. The tenant consented to AB remaining on the conference call. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on October 7, 2015 she forwarded the tenant's application for dispute resolution and supporting documents via registered mail to the landlord. The landlord acknowledged receiving the dispute resolution package.

Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application and supporting documents on October 12, 2015, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation with respect to a two month notice to end tenancy pursuant to section 51?

Is the tenant entitled to recover the filing fee pursuant to section 72?

Background and Evidence

The tenancy began in March 2010 on a fixed term and continued on a month-to-month basis. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenant remitted a \$575.00 security deposit at the start of the tenancy.

The tenant received the two month notice to end tenancy on or about July 29, 2015.

On July 31, 2015 the tenant provided the landlord with written notice to end tenancy effective August 31, 2015. The tenant withheld rent due August 1, 2015 and on August 7, 2015 gave the landlord a new written notice to end tenancy effective August 18, 2015.

It is the tenant's evidence that on August 18, 2015, she vacated the rental unit and returned the keys and entrance card. AB testified on August 22, 2015 he conducted the condition inspection report and received the keys from the tenant at this time. The landlord and AB confirmed the tenant had vacated the rental unit on August 18, 2015.

The tenant applied for compensation in the amount of \$524.16 for the balance of the 13 days in August she did not occupy the rental unit. The tenant also applied to recover the \$50.00 filing fee and \$11.58 cost of registered mail.

The landlord confirms the tenant withheld one month's rent and that she did not pay the tenant any other amounts. Both parties testified the landlord returned the security deposit to the tenant.

Analysis

Section 50 of the Act permits a tenant, who has received a two month notice to end tenancy, to give the landlord a ten day notice to end the tenancy earlier than the intended effective date of the landlord's notice. By giving this notice, the tenant does not lose their right to compensation equivalent to one month's rent under the tenancy agreement, as required by section 51 of the Act.

Section 51 of the Act establishes that a tenant may withhold the amount authorized from the last month's rent and, for the purposes of section 50 of the Act, that amount is deemed to have been paid to the landlord.

The tenant issued a thirty day notice and then within one week issued a new ten day notice. The Act does not restrict tenants from giving multiple notices, however it does stipulate it must be written and at least ten days. I find the tenant complied with the

Act in both instances and issued a valid ten day notice effective August 18, 2015 pursuant to section 50 of the Act and withheld rent pursuant to section 51 of the Act. Accordingly, I find the tenant is entitled to a refund for the rent deemed paid for the period after the effective date of August 18, 2015. The tenant is entitled to a rent refund for the 13 days the tenant did not occupy the unit. The tenant's claim has been allowed in the total amount of \$524.16.

The tenant requested to have the cost of the registered mail reimbursed. These costs are best characterized as "disbursements" incurred in the course of these proceedings. Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. Provisions regarding costs are not specifically included in the Act. I conclude that this exclusion is intentional and includes disbursement costs. I find that the tenant is not entitled to recover the tenant's disbursement costs as disbursements are not a cost that is compensable under the Act.

The only additional cost the tenant is entitled to recover is the \$50.00 filing fee for her application, for a total award of \$574.16 and I grant the tenant an order under section 67 in the said amount.

Conclusion

I find that the tenant is entitled to a Monetary Order in the amount of \$574.16. The tenant is provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 13, 2016

Residential Tenancy Branch