



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This is an application brought by the tenant requesting a Monetary Order in the amount of \$1900.00.

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed on February 12, 2016; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing and I therefore conducted the hearing in the respondent's absence.

The testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The applicant testified that this tenancy began on October 1, 2014 with a monthly rent of \$600.00 due on the first of each month.

The applicant further testified that on January 4, 2016 the landlord personally served her with a two month Notice to End Tenancy for landlord use, stating that the rental unit would be occupied by the landlord.

The applicant further testified that on January 21, 2016 she served the landlord with a 10 day Notice to End Tenancy effective January 31, 2016, however rent was fully paid to the end of January 2016.

The applicant further testified that she has requested that the landlord compensate her the equivalent of one month's rent as required when a Notice to End Tenancy is given for landlord use; however the landlord has refused to do so.

The applicant further testified that on February 2, 2016 she received an e-mail from the landlord stating that the landlord had rented out the unit and therefore, since the landlord has failed to comply with the reasons given for ending the tenancy, she is also requesting the equivalent of two months compensation required under the act.

The applicant further states that she is requesting recovery of her \$100.00 filing fee.

Analysis

It is my finding that the tenant has shown that the landlord gave her a section 49 Notice to End Tenancy for landlord use, and the tenant has provided a copy of that notice in her dispute resolution package.

It is also my finding that the tenant gave the landlord a valid 10 day Notice to End Tenancy earlier, as allowed under section 50 of the Residential Tenancy Act, which states:

- 50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Therefore, since the tenant had paid the full rent up to the date that she moved out, the landlord was required to pay the tenant the equivalent of one month rent, pursuant to section 51 of the Residential Tenancy Act.

Section 51 of the Residential Tenancy Act states:

- 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.
- (2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the landlord has failed to pay the tenant the equivalent of one month rent, as required when a section 49 Notice to End Tenancy is given, and therefore I allow the tenants request for an Order for \$600.00.

Further it is also my finding that the tenant has shown that the landlord did not use the rental unit for the stated purpose, and in fact rented the unit out to new tenants in February of 2016, and therefore pursuant to section 51(2) the landlord is required to further pay the equivalent of two months' rent as compensation.

It is my decision therefore, that the landlord is required to pay the tenant a total of \$1800.00 compensation, as required under section 51 of the Residential Tenancy Act.

As I have allowed the tenants full claim, I also allow the tenants request for recovery of her \$100.00 filing fee.

Conclusion

Pursuant to sections 49, 51, 67, and 72 of the Residential Tenancy Act I have issued an Order for the landlord to pay \$1900.00 to the tenant.

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: September 27, 2016

Residential Tenancy Branch