



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Are the tenants entitled to compensation under sections 50 and 51, as claimed?
2. Are the tenants entitled to compensation for mailing costs, a title search and costs to develop photographs?

Background and Evidence

The parties entered into an oral tenancy agreement for a tenancy that commenced in July 2014. The tenants were required to pay rent of \$750.00 on the first day of every month. A security deposit was not paid.

On November 29, 2016 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") to the tenants with a stated effective date of January 31, 2017. The tenants accepted that the tenancy would end for landlord's use and did not file to dispute the 2 Month Notice. The tenants paid rent for the month of December 2016. On December 8, 2016 the tenants issued a letter to the landlord giving the landlord notice to end the tenancy effective December 20, 2016.

Also in the letter the tenants requested compensation payable to tenants in receipt of a 2 Month Notice, calculated as follows:

Refund of rent paid for December 21 – 31, 2016	\$ 266.09
Compensation equivalent to January 2017 rent	<u>750.00</u>
Total requested	\$1,016.09

The tenants vacated the rental unit on December 20, 2016. The landlord was on his way to the rental unit on December 20, 2016 but was delayed when the highway was shut down. The landlord instructed the tenants to leave the keys in the mailbox through their daughter. The tenants mailed the keys to the landlord instead and took photographs of the rental unit.

The landlord provided the tenants with a cheque for \$225.00 along with a letter dated January 3, 2017. The letter described how the landlord calculated the tenants entitled to a refund of \$275.00 for 10 days in December 2016 but was deducting \$50.00 for cleaning the steps. The tenants did not cash the cheque as they did not agree with the amount offered.

The tenants seek a Monetary Order for the amount of \$1,016.09 as calculated in their letter of December 8, 2016. The landlord acknowledged that the tenants are entitled to recovery of the rent paid for December 21 through December 31, 2016 but was of the position they are not entitled to the \$750.00 they claimed for the month of January 2017. The landlord submitted that the tenants should not receive the \$750.00 because the tenants did not clean the stairs and there was damage to the yard. The landlord also stated that the tenants should not receive the \$750.00 because the landlord had chosen a closing date for the sale of the property of February 3, 2017 to accommodate the tenants; the tenancy had formed on an emergency basis as a favour to the tenant's daughter; and, the tenants caused the landlord to incur cable/internet costs.

The tenants also seek recovery of mailing costs to correspond with the landlord, mail the keys to the landlord, develop photographs taken of the rental unit; and, perform a title search to determine when the property sold. I dismissed these claims summarily and did not seek a response from the landlord.

Analysis

Where a tenant receives a 2 Month Notice, the tenant is permitted to end the tenancy earlier than the stated effective date by giving the landlord 10 days of written notice and receive a refund of rent paid for days after their effective date, as provided under section 50 of the Act. I have reproduced section 50 below:

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*].

[Reproduced as written with my emphasis underlined]

In this case, the tenants were served with a 2 Month Notice pursuant to section 49 of the Act and the tenants ended the tenancy early on December 20, 2016 by way of 10 days of written notice, as they are permitted to do under section 50 of the Act. The tenants had already paid rent for December 2016 and as such the tenants were entitled to a refund of the rent paid for December 21 – 31, 2016 under section 50 of the Act. I have reviewed the tenants' calculation of the pro-rated rent and I find that it is accurate. Therefore, I find the tenants entitled to \$266.09 as requested.

As provided under section 50 of the Act, a refund of rent payable under section 50 does not affect the tenant's entitlement to compensation payable under section 51 of the Act. Where a tenant receives a 2 Month Notice, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51(1) provides that every tenant in receipt of a 2 Month Notice is entitled to compensation equivalent to one month's rent. The compensation may be received by way of a refund from the landlord or by the tenant occupying the rental without paying rent. There is no exemption from the requirement to pay the tenant compensation under section 51(1) and the landlord's reasons for not paying this compensation to the tenants have no merit. Since the tenants did not occupy the rental unit and withhold rent, I find the tenants are entitled to payment of \$750.00 under section 51(1) of the Act as requested.

As the parties were informed, if the landlord is of the position the tenants owe the landlord compensation, the landlord's remedy is to file his own Application for Dispute

Resolution if the tenants do not pay the amount requested. The landlord still has the right to file an Application for Dispute Resolution. The time limit for doing so is within two years of the tenancy ending.

As for the tenants' request to recover mailing costs, photograph development costs and a title search fee, I find the tenants are not entitled to recovery of such amounts under the Act. There is no provision in the Act to recover costs to correspond with one's landlord. Further, section 37 of the Act places the burden to return keys to the landlord at the end of the tenancy upon the tenant and the tenants chose to use mail to do so but the landlord is not liable to pay for this method of delivery. Also, the tenant's decision to confirm the sale of the property does not translate into an obligation for the landlord to reimburse the tenant for this cost. Therefore, these claims were dismissed.

Since the tenants' request for compensation payable under section 50 and 51 of the Act had merit, I award the tenants recovery of the \$100.00 filing fee they paid for this application.

In light of all of the above, the tenants are provided a Monetary Order in the sum of \$1,116.09 [calculated as \$266.09 + \$750.00 + \$100.00] to serve and enforce upon the landlord.

Conclusion

The tenants have been provided a Monetary Order in the sum of \$1,116.09 to serve and enforce upon 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: September 22, 2017

Residential Tenancy Branch