



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR MNDC OLC FF

Introduction

Only the tenant attended the hearing and gave sworn testimony. The tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail (tracking numbers provided). I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to refund one month's rent pursuant to sections 49, 50 and 51;
- b) To order the landlord to obey the Act and refund the correct amount of rent;
and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to a refund of rent pursuant to sections 50 and 51 and to recover their filing fee?

Background and Evidence

Only the tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenant provided evidence that he was served with a two month Notice to End Tenancy for landlord's use of the property dated May 27, 2017 to be effective July 31, 2017. His tenancy began about a year ago, rent was \$800 a month and he paid a security deposit of \$400. He said he gave the landlord 22 days written notice to end his tenancy and vacated on June 30, 2017 and returned the keys on July 1, 2017. He received a refund of the security deposit.

He said the landlord cashed his rent cheque for \$800 in July but then refunded it to him. He contended that he was entitled to compensation of one month's rent for July 2017 pursuant to the landlord's Notice to End Tenancy and also should be entitled to a second refund for July rent since he had moved out early.

I explained section 50 and 51 of the Act to him on the telephone and also the printed explanation and calculation from the Residential Branch website on the Two Month Notice to End Tenancy. He said he finds it convoluted and does not agree with my explanation or the legislation. He believes he should get an additional month's rent for he did not live there in July. I advised him of the opportunity to Review my decision within two days of receipt and that complaints on how the legislation is written should be addressed to the legislature.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The *Residential Tenancy Act* provides:

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].

Tenant's compensation: section 49 notice

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.

As discussed with the tenant in the hearing, I find he was entitled to the last month (July 2017) rent free pursuant to the Two Month Notice to End Tenancy. I find he paid rent for July and the landlord refunded that \$800 rent in accordance with section 51(1.2).

Although the tenant gave 22 days written Notice to End his tenancy early after receiving the two month Notice, I find the effective date of the tenant's Notice was June 30, 2017. I find he paid rent for June 2017 but is not entitled to a refund for any of June rent since he occupied the premises until the end of June. As I pointed out to him, if he had left earlier in June after 10 days Notice, he would have been entitled to a refund of rent for June prorated from the effective date of his Notice to the end of June. In conclusion, I find the tenant is not entitled to further compensation pursuant to sections 50 and 51.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. I find him not entitled to recover filing fees due to lack of success.

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: January 11, 2018

Residential Tenancy Branch