



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 24, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for compensation for loss or other money owed; and,
- Recovery of the cost of the filing fee.

Both the Landlord (agent of) and one of the Tenants, F.C., (referred to as the "Tenants") attended the hearing and provided testimony. The Landlord acknowledged receipt of the Tenants' evidence package, including the application and Notice of Hearing. The Landlord did not submit any documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation for loss or money owed?
2. Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

As per the tenancy agreement provided into evidence, the Tenants were in a fixed term lease, ending on October 31, 2017. The Tenants stated that they received a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on August 25, 2017. As per this Notice, which was provided into evidence, the Landlord issued it for the following reason:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Tenants stated that after receiving the Notice at the end of August 2017, they paid September rent and then gave the Landlord written Notice on September 3, 2017, that they would be vacating the rental unit early and would move out on September 15, 2017. The Tenants stated that since they gave at least 10 days' notice and left before the end of the month, they should be entitled to recover the rest of September (Half month's rent). The Tenants also stated that they should be given one month's compensation for the month of October, pursuant to section 51 of the Act because the Landlord issued the Notice. The Tenants stated that current rent is \$2,200.00.

The Landlord stated that they do not feel they should have to compensate the Tenants because they were under a fixed term tenancy agreement until the end of October 2017. The Landlord also feels they should not have to repay the Tenants for the last half of September 2017.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First, I turn to the Tenants' request to obtain one months' compensation based on the Notice, pursuant to section 51 of the Act. The Tenant pointed out that the Landlord issued the Notice on August 25, 2017, with an effective date of October 31, 2017.

First, I turn to the following portion of the Act:

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.*

I acknowledge that the Tenants were under a fixed term lease until the end of October 2017. However, I find the Landlord is still obligated to compensate the Tenants, pursuant to section 51 of the Act, in the amount of \$2,200.00, which is equivalent to one months' rent. This amount is compensable upon the Tenants' receipt of the Notice. It is important to note that a Landlord may issue a 2 month notice to end tenancy during a fixed term tenancy, as long as the effective date does not occur before the end of that term. In this case, the effective date of the Notice and the end of the fixed term coincide. The Landlord is required to compensate the Tenants for this amount.

Next, I turn to the Tenants' other monetary request, that the Landlord repay them the last half of September 2017 rent because they provided at least 10 days' notice that they were going to vacate early, following receipt of the 2 Month Notice. In consideration of this request, I find it important to the following Residential Policy Guideline #30 – Fixed Term Tenancies:

“The tenant may not, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.”

Since the Tenants gave notice that they were going to vacate early on a date which was before the end of the fixed term lease, I find they are not entitled to compensation for this amount. I dismiss the Tenants' application on this matter.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were partially successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I find the Tenants are entitled to a monetary order as follows:

- \$2,200.00 for one months' compensation due under section 51 of the Act
- \$100.00 for the cost of the filing fee
- Total: \$2,300.00

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$2,300.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: April 26, 2018

Residential Tenancy Branch