



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The parties testified that they were in receipt of each other's application and evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced

here. The principal aspects of the parties' claims and my findings around each are set out below.

The landlord assumed ownership of the rental property and its existing tenancy on February 1, 2016, with the intention to demolish the rental unit and build a new home on the property. Instead of continuing the tenancy agreement that had existed between the tenant and the previous owner of the property, the tenant and the landlord entered into a new tenancy agreement effective February 1, 2016.

The tenant submitted a copy of the tenancy agreement into evidence. The landlord claimed that the tenant filled out most of the agreement. The tenant acknowledged filling out most of the agreement and then providing it to the landlord for his signature. Under the "Length of tenancy" section, the tenant checked the option for "a) on a month-to-month basis". There is no check mark beside "b) for a fixed length of time" and nothing entered in the box beside it for "length of time". However, in the box next to that, labelled as "ending on", the landlord entered the date of "31 May 2016". Below this, the landlord selected the following option to determine what happens "At the end of this fixed length of time:", by checking the box beside:

*ii) the tenancy ends and the tenant must move out of the residential unit.
If you choose this option, both the landlord and tenant must initial in the boxes to the right.*

The landlord's initials are in the box labelled "Landlord's initials" but the tenant has not initialed in the box beside it labelled "Tenant's initials".

The monthly rent was \$1,200.00. A security deposit of \$600.00 had been collected at the start of the original tenancy by the previous property owner. The tenant confirmed that the landlord had returned the security deposit to her.

The tenancy agreement was signed by the landlord on February 2, 2016 and the tenant on February 4, 2016.

Both parties agreed to the following undisputed evidence:

- the tenant was served with a Two Month Notice to End the Tenancy for Landlord's Use of Property (Two Month Notice), which stated an effective move-out date of May 31, 2016;
- the tenant paid rent for the month of April 2016;

- the tenant provided notice to the landlord requesting an early end to tenancy effective April 30, 2016, and the notice was provided in writing to the landlord in a letter dated April 19, 2016.

Both parties agreed that the tenant did not move out on April 30, 2016, but the actual end date of the tenancy was disputed. The tenant stated that she moved out and returned the key (by leaving it under a flower pot on the property) on May 2, 2016 in the afternoon. The landlord testified that he attended at the rental unit on either May 3 or May 4, 2016 and retrieved the key on one of those days.

The tenant claims that the tenancy agreement was a periodic tenancy which allowed her to end the tenancy early, which she did. She claims she is entitled to the return of the \$1,200.00 in rent paid for the month of April 2016 as this was her last month residing in the rental unit and should have been provided to her free as compensation for having received the landlord's Two Month Notice.

The landlord claims that the tenancy agreement was for a fixed term ending on May 31, 2016. Therefore, he claims that the tenant was not entitled to end the agreement early, and was entitled to the month of May free of rent, not the month of April 2016.

Analysis

Section 51(1) of the *Act* states that 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.

Section 50(1) of the *Act* allows a tenant, in a periodic tenancy (which includes a month-to-month tenancy), who receives a notice under section 49 to 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.

Further to this, the subsequent sub-sections under section 50 provide the following clarification regarding a situation in which a tenant has already paid rent before giving notice to end the tenancy early:

- (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*].

A key decision point for this matter is whether or not the tenancy agreement was a periodic or fixed term tenancy, as that determines whether the tenant was entitled to end the tenancy early, which determines whether or not the tenant was obligated to pay rent for the month of April 2016.

I have weighed the evidence presented by both parties. On a balance of probabilities, I give more weight to the tenant's documentary evidence, that being the tenancy agreement, as it shows a check mark beside the "month-to-month basis" option for tenancy, and was signed by both parties. The landlord had written in an end date of the tenancy agreement of May 31, 2016, but this was not initialled by the tenant as an accepted change to the agreement that she filled out and submitted to the landlord for his signature.

Had the landlord wished to ensure that the tenancy agreement was for only a fixed term, he should have checked the box for "fixed length of time" and ensured that the tenant was asked to initial her agreement to this. The landlord provided evidence stating that a demolition permit was not provided to him until October 2016. As there was no immediate plans to undertake demolition after May 31, 2016, it raises reasonable doubt that the tenancy had to end on May 31, 2016, as it would have been possible to continue the tenancy for several months beyond that time, on a month-to-month basis.

Therefore, I find that the parties signed a month-to-month tenancy agreement and the tenant is entitled to end the tenancy early pursuant to section 50 of the *Act*, and entitled to one month of rent as compensation pursuant to section 51 of the *Act*. In this case, the tenant's monthly rent was \$1,200.00.

As the tenant was successful in her application I allow the tenant to recover the \$100.00 filing fee from the landlord.

To summarize, I grant the tenant a monetary order in the amount of \$1,300.00, explained as follows:

| Item | Amount |
|---|--------------------------|
| Return of April 2016 rent to the tenant | \$1,200.00 |
| Filing fee recovery for tenant | \$100.00 |
| Total Monetary Order in favour of tenant | <u>\$1,300.00</u> |

As the matter before me pertains only to the tenant's application for legislated compensation pursuant to section 51 of the *Act*, the issue of the tenant's overholding was not an issue for my consideration at this hearing. The landlord is at liberty to submit his own application should he wish to pursue that matter.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1,300.00. 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 *Residential Tenancy Act*.

Dated: June 11, 2018

Residential Tenancy Branch