



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FFT

Introduction

On November 22, 2017, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("The Act") for a monetary order for money owed or compensation for damage or loss under the Act, the regulations, or a tenancy agreement, and to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed they received the evidence from the other party.

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.

Issues to be Decided

- Is the Tenant entitled to compensation from the Landlord?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on November 15, 2016, as a one year fixed term tenancy. Rent in the amount of \$1,750.00 was to be paid on the first of each month. The Tenant paid the Landlord security deposit of \$875.00. The Landlord provided a copy of the tenancy agreement and addendum.

The Tenant testified that the Landlord issued him a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated August 1, 2017.

The Tenant testified that he accepted the 2 Month Notice and gave the Landlord notice that he was moving out early. The Tenant moved out of the rental unit on August 31, 2017.

The Tenant testified that the Landlord never compensated him after issuing the 2 Month Notice.

The Tenant is seeking \$1,750.00 as compensation for receiving the 2 Month Notice.

In response, the Landlord acknowledged that he issued the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated August 1, 2018.

The Landlord submitted that the parties entered into an addendum to the tenancy agreement that states that either party can give 2 months' notice to end the tenancy agreement. The Landlord submitted that this addendum releases him from having to pay compensation to the Tenant for issuing the 2 Month Notice.

Analysis

Section 50 of the Act provides if a Landlord gives a Tenant notice to end a periodic tenancy under section 49 [landlord's use of property] the Tenant may end the tenancy early by 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. A notice to end the tenancy from the Tenant under this section does not affect the Tenant's right to compensation under section 51.

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 5 of the Act provides that Landlords and Tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated August 1, 2018. The Tenant accepted the Notice and moved out on August 31, 2017, before the effective date of the 2 Month Notice

The Tenant never received the equivalent of 1 months' rent from the Landlord.

The tenancy agreement addendum does not excuse the Landlord from his obligation to pay compensation to the Tenant for the 2 Month Notice.

I find that the Landlord owes the Tenant the equivalent of one month's rent payable under the tenancy agreement. The Landlord owes the Tenant \$1,750.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$1,850.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated August 1, 2018 and never compensated the Tenant as required under section 51 of the *Act*.

I find that the Landlord owes the Tenant the equivalent of one month's rent payable under the tenancy agreement. The Landlord owes the Tenant \$1,750.00 and \$100.00 for the cost of the filing fee.

I grant the Tenant a monetary order in the amount of \$1,850.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from 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: July 05, 2018

Residential Tenancy Branch