



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 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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Is the tenant entitled a monetary order for compensation for damage or loss?

Is the tenant entitled to recover the filing fee for this application and a previous application from the landlord?

Background and Evidence

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on October 31, 2016. The Two Month Notice had an effective date of December 31, 2016.

The tenant is claiming the equivalent of One Month's rent as compensation pursuant to section 51 of the Act. The tenant paid rent in full for the month of November 2016 but vacated the rental unit on November 15, 2016. The tenant testified that she moved quickly as the roommate she found new accommodation with needed her to move in right away. The tenant testified that she provided Notice to the landlord by way of a text message dated November 3, 2016.

The tenant is also claiming the recovery of a filing fee of a previous application she filed which was subsequently cancelled by her.

The landlord disputed receiving any Notice by text message from the tenant. The landlord testified that she only became aware the rental unit had been vacated after being advised of such by her Realtor.

Analysis

Section 51 (1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord's use of property is entitled to receive from the landlord an amount that is equivalent to one month's rent payable under the tenancy agreement.

Pursuant to section 50 of the Act, a tenant may end tenancy early after being served with a Two Month Notice by giving the landlord at least 10 days written notice to end tenancy on a date that is earlier than the effective date of the landlord's notice. If the tenant paid rent before giving notice under this section, the landlord must repay any rent paid after the effective date of the tenant's notice. A notice under this section does not affect the tenant's right to compensation for the equivalent of one month's rent under section 51.

The effective date of the landlord's notice was not until December 31, 2016. I find the tenant has provided insufficient evidence of giving the landlord written notice to end the tenancy on a date earlier than the effective date of the landlord's notice. The landlord disputed the tenant's testimony that notice was provided by a text message to end the tenancy early on November 15, 2016. The tenant did not submit any supporting evidence of this text message being sent and received by the landlord. In either event, a text message is not an acceptable method of service pursuant to section 88 of the Act. As the tenant has not provided sufficient evidence that the tenancy was ended early in accordance with the Act, I find this tenancy did not end until the effective date of the landlord's notice, December 31, 2016. Had the tenant continued to reside in the rental unit until this date, the tenant could have withheld the last month's rent to satisfy this entitlement.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenant is also not entitled to recover the filing fee of the previous application as it was cancelled by her.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 06, 2018

Residential Tenancy Branch