



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

On October 2, 2018 the landlord made a Request for Clarification of a Decision dated July 12, 2018. The Request indicates it was received by the landlord on July 19, 2018. The Request states: "Would rent be owed for September 2018 if we have mutually agreed to end tenancy. What is meant by an order to recover the cost of the filing fee? Is the original 2 month Notice to null and void."

The decision dated July 12, 2018 recorded a settlement between the parties:

"Settlement:

The parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Act as follows:

- a. The parties mutually agree to end the tenancy on September 30, 2018.
- b. The parties request that the arbitrator issue an Order of Possession effective September 30, 2018."

There is a typographical error in the style of cause in the Decision dated July 12, 2018. The tenants are incorrectly identified as the landlord and vice versa. I amended the decision to correctly identify the parties.

Section 78 provides as follows:

Correction or clarification of decisions or orders

78 (1) Subject to subsection (2), the director may, with or without a hearing,

(a) correct typographic, grammatical, arithmetic or other similar errors in his or her decision or order,

(b) clarify the decision or order, and

(c) deal with an obvious error or inadvertent omission in the decision or order.

(1.1) The director may take the steps described in subsection (1)

(a) on the director's own initiative, or

(b) at the request of a party, which request, for subsection (1) (b) and (c), must be made within 15 days after the decision or order is received.

The Act provides that for an arbitrator to consider a Request for Clarification made by a party that it must be made within 15 days of receiving the decision or order. The Request was received by the landlord on July 19, 2018. The Request for Clarification was received by the Residential Tenancy Branch on October 2, 2018 which is past the time period required by the Act. As a result I dismissed the Request for Clarification.

Further, no clarification is necessary as the decision records a settlement between the parties.

While it is not clear from the Request it appears the landlord is asking whether the tenants have lost their rights under section 51 of the Act as a result of the settlement. Section 51 provides as follows:

Section 51 of the Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who **receives a notice to end a tenancy under section 49 (my emphasis)** [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.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In my view the right of the tenants under section 51 is triggered by the landlord serving a 2 month Notice to End Tenancy. It is not triggered by the manner in which the tenancy has come to an end. The Tenants retain their rights under section 51 of the Act as the parties did not agree to the release and discharge of these rights in the settlement.

Determination:

The Request for Clarification is dismissed.

This decision is final and binding on the parties.

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: October 22, 2018

Residential Tenancy Branch