



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

The hearing was conducted as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order in the amount of \$600.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The tenant attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me during the hearing. Only the evidence relevant to my decision has been included below.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), the application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on March 23, 2018. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address for the landlord. The registered mail tracking number was included on the cover page of this decision for ease of reference.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. The tenant testified that the registered mail package was returned as "unclaimed". I find the landlord was duly served on the fifth day after mailing on March 28, 2018, in accordance with the Act. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the Act.

Preliminary and Procedural Matter

The tenant did not provide an email address during the hearing and requested that the decision be sent by regular mail. Accordingly, both parties will have this decision sent by regular mail.

Issue to be Decided

- Is the tenant entitled to money owed or for compensation for damage or loss under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 1, 2017 and ended on March 1, 2018 when the tenant stated he vacated the rental unit. Monthly rent of \$600.00 was due on the first day of each month.

The tenant provided a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 30, 2018 ("2 Month Notice"). The tenant affirmed that he did not dispute the 2 Month Notice which listed an effective vacancy date of April 1, 2018 which should have read March 31, 2018; however the landlord provided the tenant an extra day to vacate the rental unit.

The tenant confirmed during the hearing that he did not provide a 10 day notice to vacate the rental unit early in writing to the landlord. The tenant also confirmed that monthly rent was paid by the government and that the government paid the landlord by cheque directly. The tenant also testified that for March 2018, the landlord received the government cheque and walked with him to the tenant's new rental unit and gave the March 2018 rent cheque of \$600.00 to the tenant's new landlord. The tenant confirmed that he did not pay March 2018 rent at his new rental unit as a result of the landlord walking with him over to his new rental unit and giving the rent payment for March 2018 to his new landlord.

The tenant's position is that he has not been compensated by the landlord as required when having been served with a 2 Month Notice.

Analysis

Based on the above and the evidence provided, and on a balance of probabilities, I find the following.

Section 51 of the *Act* applies and states:

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.

(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.

[My emphasis added]

Based on the above, I accept the tenant's testimony that the landlord walked over to the tenant's new rental unit and paid his new landlord the \$600.00 rent for March 2018. The tenant confirmed that his rent was being paid by the government. The tenant provided no supporting evidence that the government would pay rent at both rental units for the month of March 2018. I find that it is more likely than not that the government would not pay rent for the tenant at two different rental units for the same month in any event.

Section 50 of the *Act* also applies and states:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may 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.

(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].

[My emphasis added]

I find the tenant failed to give the landlord 10 days' written notice as required by section 50 of the *Act* to end the tenancy earlier than the April 1, 2018 effective vacancy date.

As a result, I find the tenant received compensation of \$600.00 from the landlord as the landlord brought the rent cheque he received from the government for March 2018, did not cash it, and instead gave the March 2018 government rent cheque on behalf of the tenant to the tenant's new landlord. Therefore, I find the tenant was compensated with the equivalent of one month's rent as a result, and I disagree with the tenant's claim that he was not compensated. The landlord did not cash the March 2018 rent cheque and the tenant received the benefit of the \$600.00 amount by the government cheque being used to pay his March 2018 rent.

Furthermore, I find the tenant's application to be frivolous, an abuse of the dispute resolution process and an attempt by the tenant to defraud the government out of an extra March 2018 rent amount. Therefore, **I dismiss** the tenant's due to insufficient evidence without leave to reapply and pursuant to section 62(4)(c) of the *Act* which states:

Director's authority respecting dispute resolution proceedings

62 (4) The director may dismiss all or part of an application for dispute resolution if

(c) the application or part is frivolous or an abuse of the dispute resolution process.

[My emphasis added]

The tenant's claim has no merit and is dismissed in its entirety due to insufficient evidence.

Conclusion

The tenant's application is dismissed in full. I find the tenant's claim is both frivolous and an abuse of the dispute resolution process.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 15, 2018

Residential Tenancy Branch