



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, 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*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord confirmed that he had received the tenant's application. As the landlord did not raise any issues regarding service of the application, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Landlord's Evidence

Pursuant to Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, a respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch. At the outset of the hearing, the landlord testified that he did not serve his evidence to the tenant. Because the landlord did not serve his evidence and the tenant did not receive the landlord's evidence, I have not relied on it to form any part of my decision.

Issue(s) to be Decided

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

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

The parties testified that the landlord assumed this tenancy in November 2017, when the landlord purchased the property from the previous landlord. The landlord did not receive a tenancy agreement from the previous owner and did not enter into a new tenancy agreement with the tenant in November 2017. The parties agreed the tenancy started February or March of 2013 and rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$950.00 was remitted by the tenant at the start of his tenancy. The landlord assumed this deposit from the former landlord.

The parties agreed that on October 11, 2017 the tenant signed a mutual agreement to end tenancy effective December 31, 2017. The tenant vacated the unit on December 31, 2017 but now seeks compensation equivalent to one month's rent in the amount of \$950.00. It is the tenant's position that he is entitled to this amount as he should have received a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). Both parties testified that the tenant was not issued a 2 Month Notice.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the rental unit will be occupied by the landlord or the landlord's close family member. In this circumstance, the landlord must issue a 2 Month Notice.

Section 51 of the *Act* establishes that a tenant who receives a notice to end tenancy under section 49 is entitled to receive an amount that is equal to one month's rent payable under the tenancy agreement.

Because the tenant did not receive a 2 Month Notice as required by section 51 of the *Act*, the tenant is not entitled to compensation of one month's rent. Accordingly, I dismiss the tenant's claim of compensation.

Conclusion

The tenant's entire 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: September 21, 2018

Residential Tenancy Branch