



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act*, (the “*Act*”), to request a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*, and to recover their filing fee. The matter was set for a conference call.

Both the Landlords and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

- Are the Tenants entitled to a monetary order for compensation, pursuant to section 51 of the *Act*?
- Are the Tenants entitled to recover the filing fee paid for this application?

Background and Evidence

The parties agreed that this tenancy agreement began on February 7, 2017, as a month to month tenancy. Rent in the amount of \$1,900.00 was to be paid by the first day of each month.

The parties agreed that the Landlords served the Tenants with a Two-Month Notice to End Tenancy for the Landlord's Use of the Property on December 29, 2017. The Notice had an effective date of March 1, 2018.

The parties also agreed that the Tenant's give the required 10-day Notice to end the tenancy earlier than indicated on the Two-Month Notice and that the Tenants moved out of the rental unit on February 1, 2018, in accordance with the *Act*.

The Tenants testified that the Landlord had re-rented the rental unit as soon as they moved out and that the Landlord had been showing the rental unit to prospective new renters before they moved out. The Tenants testified that they received an email, on June 2, 2018, from the Landlords confirming the rental unit had been re-rent. The Tenants submitted a copy of the email into documentary evidence.

The Landlords testified that they were unable to move into the rental unit due to medical illness and that it was on the advice the Landlords' physician that they decided not to move. The Landlords testified that they had moved a new renter into the rental unit.

Analysis

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

I accept the testimony of both parties that the Landlord served Notice to end the tenancy pursuant to section 49 of the *Act* on December 29, 2017, and that the Notice had an effective date of March 1, 2018.

I also accept the testimony of both parties that the Tenants moved out of the rental unit on February 1, 2018, in accordance with the *Act*.

Before me, I have an application for compensation pursuant to section 51 of the *Act*. I note that section 51 of the *Act* was amended on May 17, 2018. Therefore, I must first determine if the amended legislation pertains to the Notice issued in this case or if this Notice falls under the old legislation.

The royal assent for the legislated amendments was received on May 17, 2018, and stated that the amendments apply to all notices issued as of the date of royal assent and onwards.

In this case, I find that the Notice was issued on December 29, 2017, prior to the date of royal assent and therefore falls under the form and content of the old legislation.

Section 51 of the old legislation stated:

Tenant's compensation: section 49 notice

- 51** (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I accept the testimony of the Landlords that they did not move into the rental property as planned and that they had re-rent the rental unit. I find that the Landlords are in breach of section 51 of the *Act*, as they did not use the property for the stated purpose on the Notice.

Pursuant to section 51 of the *Act*, I find that the Tenants have successfully proven they are entitled to compensation for the Landlord's breach of the *Act*. Therefore, I must grant the Tenants a monetary order in the amount of \$3,800.00, consisting of two months' rent compensation.

I acknowledge the testimony of the Landlords, that it was due to medical advice that they changed their mind about moving into the rental unit. However, I note that notices issued pursuant to section 49 of the *Act*, before May 17, 2019, have no provision to allow an arbitrator discretion for extenuating circumstances when rendering their decision, pursuant to section 51 of the *Act*

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in this application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the Tenants a **Monetary Order** in the amount of \$3,900.00. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 30, 2018

Residential Tenancy Branch