



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was scheduled in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage or compensation 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 landlord GM (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. The landlord confirmed he had authority to speak on behalf of landlord CM, who was not present.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or compensation 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

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on March 1, 2014 on a fixed term for one year at which time it continued on a month-to-month basis. Rent in the amount of \$1,000.00 was payable on the first of

each month. The tenant remitted a security deposit in the amount of \$500.00 at the start of the tenancy which was later returned to her at the end of tenancy.

Between June 25, 2018 and June 26, 2018 the parties exchanged text messages in relation to a July 28, 2018 move out date. Following this text exchange, on June 30, 2018 the tenant received the landlord's 2 Month Notice with an effective date of August 31, 2018. The tenant paid July rent and vacated the rental unit July 28, 2018, pursuant to the text messages.

The tenant seeks the reimbursement of July rent and the cost of the filing fee. In reply, the landlord testified that the tenant failed to provide 10 days written notice and as a result, she is not entitled to the one month compensation.

Analysis

Section 50 of the *Act* permits a tenant, who has received a two month notice to end tenancy, to give the landlord a ten day written notice to end the tenancy earlier than the intended effective date of the landlord's notice. Section 51 of the *Act* establishes that a tenant may withhold the amount authorized from the last month's rent and, for the purposes of section 50 of the *Act*, that amount is deemed to have been paid to the landlord.

I find the tenant failed to provide a valid 10 day written notice and in turn failed to effectively end the tenancy on July 28, 2018. As a result, the tenant became responsible for August rent. In accordance with section 51 of the *Act*, the tenant was entitled to withhold August rent in lieu of compensation. Therefore I find the tenant received her compensation by way of the withheld August rent and is not entitled to receive further compensation. The tenant's claim for compensation pursuant to section 51 of the *Act* is dismissed without leave to reapply

As the tenant was not successful in this application, I find she is not entitled to recover the \$100.00 filing fee.

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: December 14, 2018

Residential Tenancy Branch