



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The tenant applies to recover moving costs. Also revealed by her application, she seeks an order that the landlords comply with the law by paying her the equivalent of one month's rent required with the giving of a two month Notice to End Tenancy.

Both parties attended the hearing, the landlords by their agent, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did this tenancy end by operation of a two month Notice? Have the landlords breached the *Residential Tenancy Act* (the "Act") or the tenancy agreement in such a manner as to entitle the tenant to recover her moving costs?

Background and Evidence

The rental unit is a two bedroom condominium. There was a written tenancy agreement. The tenancy started May 1, 2015. The tenant says she moved in a few days earlier. The initial monthly rent was \$1600.00 initially and \$1650.00 by the end of the tenancy. The tenant vacated at the end of October 2017. All deposit money issues were resolved at that time.

In mid 2017 the landlords desired to put the property up for sale. In late July the landlord's agent met with the tenant and negotiated a mutual agreement dated July 29, to end the tenancy effective November 1, 2017. The tenant signed the document but

within a day or so indicated to the landlord's agent that she was having second thought and proposed to revoke her agreement.

Over the next three weeks or so the landlords found a buyer for the condo a couple and the buyers requested the landlords give the tenant notice that they desired to move in.

As a result, the landlord's agent issued a two month Notice to End Tenancy to the tenant, dated August 17, 2017, purporting to end the tenancy November 1, 2017, the same ending day as the mutual agreement had provided.

Nothing more seems to have been said about the two documents. The tenant moved out in October, a move-out inspection was done, a report prepared and the landlords e-transferred the tenant's security deposit back to her.

At this hearing a number of issues were discussed which were not germane to the question at hand, including where the landlords live, the extra cost of the tenant's mover, whether the tenant ever met the buyers, whether she'd been asked to remove her shoes in the condo and whether the tenant was suffering from ill health at the time of the move out.

Analysis

Which of the mutual agreement to end tenancy and the two month Notice are the effective document ending this tenancy? One entitles the tenant to compensation equivalent to one month's rent and one does not.

Despite the tenant's second thoughts about signing the mutual agreement to end tenancy, it appears to me to have been a valid and binding document. She was not pressured into signing it and chose to do so without ascertaining her rights and obligations under it.

The two documents cannot stand together. They impose different rights and obligations. Particularly, the obligation imposed on a landlord by s. 51(1) of the *Act*, which provides that 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 and that the tenant may chose to simply offset her last month's rent in satisfaction of the obligation.

The landlord's agent suggests the mutual agreement should be given precedent because it was signed by the tenant and the Notice wasn't. I do not find this argument persuasive. Tenants are not required to sign a two month Notice for it to be effective and a tenant's signature on such a Notice would not add to the Notice's effectiveness or make it more binding.

In my view, the mutual agreement to end the tenancy was replaced by the giving of the two month Notice. By that notice the landlord was purporting to end the tenancy on a different basis than the mutual agreement. Of note, the Notice was given after the tenant had expressed her reluctance to be bound by the mutual agreement, indicative of a potential opposition to abiding by it. The landlords' action in issuing the two month Notice may well have been insurance that the tenant vacate by November 1. The landlord's representative offered no plausible explanation for the Notice.

In result, the tenant is entitled to recover the one month's compensation. The fact that the landlords may have declined to agree to credit the tenant for the compensation during the tenancy or that the tenant then paid the October last month's rent or that the tenant did not formally claim the compensation until after she vacated the rental unit are all of no consequence.

I dismiss the tenant's claim for moving expenses. She received the two month Notice in mid-August and had full opportunity to assess her rights and obligations. Indeed, the mandatory Notice document itself sets them out in an easily understandable fashion.

She had the right to dispute the Notice but did not. Section 49(9) of the *Act* is clear: if a tenant who has received a notice under s. 49 does not make an application for dispute resolution in accordance with subsection (8), the tenant is (a) conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

In making her decision to accept the Notice the tenant accepted that she would be responsible for the cost of moving. Nothing in the circumstances of this case would cause that responsibility to move from the tenant to the landlord.

Conclusion

The tenant is entitled to recover the tenant's compensation provided by s. 51 of the *Act* in the amount of \$1650.00 and the \$100.00 filing fee for this application. She will have a monetary order against the landlords in the amount of \$1750.00.

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 17, 2018

Residential Tenancy Branch