



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on January 29, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

One of the Tenants, C.F., attended the hearing. The also attended the hearing. The Tenant testified that she sent a copy of the Notice of Hearing along with supporting documentary evidence to the Landlord by registered mail on October 14, 2018. The Landlord confirmed that this was his mailing address, but stated he did not get it. He only was made aware of the dispute when he got a reminder email from the Tenancy Branch. Pursuant to sections 88 and 90 of the *Act*, the Tenant's application and evidence is deemed to be received 5 days after it was sent, October 19, 2018. Failure to pick up registered mail is not a ground for review. I find the Tenant sufficiently served the Landlord with the Notice of Hearing and evidence. The Landlord did not provide any evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenant stated that monthly rent was \$1,300.00 per month. The Tenant stated that on April 17, 2018, she received a text message from the Landlord which stated the following:

“I am sorry but I have to give you 2 Months’ Notice that I need to move in on July for studying in UFV and I believe it is better to let you earlier. So please let me know if you have any questions or inconvenience. Thanks.”

The Tenant stated that she moved out on June 30, 2018, and she believes the Landlord never moved into the unit, and simply re-rented it for more money. The Tenant stated that the Landlord came by with a couple of younger ladies (claiming to be interior decorators) and the Tenant now believes this was the Landlord showing the unit to new renters before she moved out. The Tenant stated that she went back to check for mail in September, and a younger lady answered the door, and said the Landlord did not live there. The Tenant felt this was further proof the Landlord did not do what he said he was going to do (move in), so she should get compensation under section 51 of the Act.

The Tenant is looking for 12 months’ rent in compensation. However, during the hearing, it was explained that 12 months’ rent in compensation is only payable in situations where the Tenant receives the Notice on or after May 17, 2018.

The Landlord stated that he was going to move into the unit to go to school, which is why he asked the Tenant to move out, via text message. However, he stated that his plans changed and he took a job, which forced him to re-rent the unit as of September 1, 2018. The Landlord stated that he only ever moved in for 3 days.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant is seeking 12 month’s

compensation, pursuant to section 51 of the Act, (12 x \$1,300.00) because the Landlord did not utilize the unit as he said he would.

First, I find it important to note that section 51 of the Act changed significantly on May 17, 2018. Prior to May 2018, and in situations where the Landlord issued a 2-Month Notice to End Tenancy for Landlord's use of the property, and then failed to perform the stated purpose on the Notice, the Tenant could seek 2 months' compensation. For 2-Month Notices issued after May 17, 2018, and in situations where the Landlord issued a 2-Month Notice to End Tenancy for Landlord's use of the property, and then failed to perform the stated purpose on the Notice, the Tenant could seek 12 months' compensation.

After reviewing this application, I note there are a few issues which make the Tenants ineligible for the amount they are seeking. First, they received a text message from the Landlord in April 2018, asking them to move out in 2 months. This is important because the new legislation, where Tenants can seek 12 months compensation only applies to 2-Month Notices issued after May 17, 2018. In this case, since the Tenants would only be eligible for 2 month's compensation, at most.

I also find that the Landlord did not issue a valid and proper 2-Month Notice to End Tenancy for Landlord's use of the property. It appears the Landlord initiated the tenancy ending, but did this via text message. I turn to the following portion of the Act:

Landlord's notice: landlord's use of property

49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Next, I turn to the following portion of the Act:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed the evidence before me, and I find the Landlord never issued a valid 2-Month Notice to End Tenancy, and the Tenant was not required to vacate the rental unit, based on the text message she received. A valid 2-Month Notice must be issued in order for compensation under section 51 to be payable. Given this, I find the Tenants are not entitled to any compensation under section 51 of the Act. I dismiss the Tenants' application, in full.

As the Tenants were unsuccessful with their application, I decline to grant them the recovery of the filing fee.

Conclusion

The Tenant's application is dismissed, in full, 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: January 31, 2019

Residential Tenancy Branch