



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On October 20, 2018, the Tenant applied for a Dispute Resolution proceeding seeking monetary compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not make an appearance. All parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and her evidence by registered mail on October 24, 2018, to the Landlord’s address on the tenancy agreement (the registered mail tracking number is on the first page of this decision). Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Notice of Hearing package and evidence five days after it was mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to compensation of partial rent?
- Is the Tenant entitled to compensation of double one month’s rent?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant stated that the tenancy started on August 1, 2008 and rent was currently established at \$1,456.00 per month, due on the first of each month. The tenancy ended on May 26, 2018 as per the Tenant's written notice. A security deposit of \$650.00 was paid. She submitted into documentary evidence a copy of the tenancy agreement.

She advised that the Landlord served her a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on March 28, 2018 and the reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The Landlord indicated on the Notice that the effective date of the Notice was May 31, 2018. As well, I find it important to note that the compensation requirements are detailed on the second page of the Notice.

She submitted notices that the Landlord served to her to enter the rental unit and these were dated March 21, 2018, March 24, 2018, March 25, 2018, April 5, 2018, April 8, 2018, April 13, 2018, and April 16, 2018. All of these notices indicated that the Landlord requested notice to enter the rental unit to have her real estate agent show the unit to potential buyers. She also submitted a document substantiating that the Landlord sold the rental unit of April 14, 2018.

The Tenant provided the Landlord with written notice on May 7, 2018 to end her tenancy early, as of May 26, 2018 pursuant to Section 50 of the *Act*. She reminded the Landlord via a letter dated August 26, 2018 that she was entitled to one month's compensation when served with this Notice and that as rent was withheld for May 2018, she should still be compensated for the days in May that she did not occupy the rental unit. As such, she is seeking compensation in the amount of **\$234.84** for the five remaining days in May 2018, pursuant to the compensation requirements of Section 51 of the *Act*.

In addition, she is seeking compensation of double one month's rent, in the amount of **\$2,912.00**, pursuant to the compensation requirements of Section 51(2) of the *Act*

because the Landlord did not use the property for the stated purpose on the Notice after the tenancy ended.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Regarding the Tenant's claims pertaining to the Notice, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, while it is an outdated Notice, I am still satisfied that it meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Tenant's claim for one month's compensation owed to her when she was served the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

51 (1) *A 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.*

The undisputed evidence is that the Tenant was entitled to one month's compensation pursuant to this Notice and that she vacated the rental unit on May 26, 2018 with the proper written notice. As rent was withheld for May 2018 and as she did not receive a full month's compensation as she vacated the property as was her right pursuant to Section 50 of the *Act*, I am satisfied that the Tenant is still entitled to the difference of five days rent. Consequently, I grant the Tenant a monetary award in the amount of **\$234.84**.

With respect to the Tenant's claim for two-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

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.

When reviewing the totality of the evidence before me, based on the undisputed testimony and evidence of the Tenant, the Landlord clearly sold the rental unit before the effective date of the Notice, while the Tenant still lived there. Consequently, I am satisfied that the owner has failed to use the rental unit for the stated purpose and that the Tenant has substantiated her claim that she is entitled to a monetary award of double the monthly rent pursuant to Section 51 of the *Act*. I find that the Tenant is entitled to compensation as set out in Section 51 of the *Act* in the amount of **\$2,912.00**.

As the Tenant was successful in her claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Rent owed for the balance of May 2018	\$234.84
Double the monthly rent	\$2,912.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$3,246.84

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$3,246.84** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: February 15, 2019

Residential Tenancy Branch