



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX PROFESSIONAL RENTAL
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation pursuant to a section 49 notice to end tenancy and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The landlord was represented by their agents.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to compensation pursuant to a s.49 notice to end tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started in January 2011. The monthly rent was \$1,320.00. On June 21, 2018, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The notice was served in the two-page standard approved format.

The reason for the notice was that the home was sold, and the new owner wanted the home to be vacant for his own use. The effective date of the notice was recorded in error as September 31, 2018. The parties agreed that the corrected effective date was August 31, 2018.

The tenant stated that she paid rent for July 2018 on July 01, 2018 and did not pay rent on August 01, 2018.

The landlord agreed that on July 13, 2018, the tenant provided her with written notice to end the tenancy effective August 06, 2018. The landlord stated that the tenant did not pay rent on August 01, 2018 and therefore the landlord understood that the unpaid rent for August 2018 covered the tenant's entitlement to compensation pursuant to a s.49 notice. The landlord stated that for this reason, she concluded that the tenant had been adequately compensated.

During the hearing, I explained section 51 to the landlord which addresses the tenant's entitlement to compensation. One of the agents of the landlord (DM) argued that the tenant had already received compensation by not paying rent for August. DM also agreed that the tenant was not required to pay rent beyond August 06, 2018 but proceeded to repeat her position that by not paying rent on August 01, 2018, the tenant had been adequately compensated.

I explained the tenant's right to compensation multiple times to DM and at the end of the hearing DM stated that she still believed that the tenant was adequately compensated and was not entitled to further compensation. DM also stated that she agreed to disagree with me on the interpretation of s.51.

Analysis

Section 49 of the *Residential Tenancy Act* deals with a landlord's notice to end tenancy for landlord's use of property.

Section 50 of the *Residential Tenancy Act* states as follows:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a)giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b)paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Pursuant to section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice 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.

Pursuant to Section 50 (1), the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. Pursuant to section 50(3) the tenant's notice to end tenancy earlier than the effective date of s.49 notice, does not affect the tenant's right to compensation.

In this case, I find that the tenant received a valid notice to end tenancy for landlord's use of property that complied with Section 52 of the *Residential Tenancy Act*. Based on the testimony of the tenant and the documents filed into evidence, I find that the tenant received a section 49 notice and accordingly is entitled to compensation pursuant to section 51, in the amount of one month's rent of \$1,320.00.

After providing adequate notice to end the tenancy, the tenant moved out on August 06, 2018. The tenant did not pay rent on August 01, 2018 and therefore received 6 days of rent-free stay.

Accordingly, the tenant is entitled to prorated rent for the remainder of 25 days in the amount of \$1,064.51, to make up the full amount of the tenant's entitlement to the equivalent of one month's rent.

The tenant has proven her case and therefore is entitled to the recovery of the filing fee of \$100.00.

The tenant has established a claim of \$1,164.51. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for \$1,164.51

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 01, 2019

Residential Tenancy Branch