



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT MNSD FFT

Introduction

This hearing dealt with an application by the tenants for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 38;
- A monetary order as compensation under section 51 (2) and 67; and
- Reimbursement of the filing fee under section 72.

The tenant LL appeared for the tenants (“the tenants”). The landlord attended. Both parties were given the opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenants. No issues of service were raised. I find the landlord was served pursuant to section 89.

At the outset of the hearing, the tenants stated the issue of the return of the security deposit was resolved; they withdrew the claim under section 38.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for compensation in the amount equivalent to one month’s rent under section 51(1)?

Are the tenants entitled to reimbursement of the filing fee under section 72 of the *Act*?

Background and Evidence

The parties agreed they entered into a tenancy agreement starting December 1, 2017 for monthly rent of \$1,700.00 payable on the first of the month. At the beginning of the tenancy, the tenants provided the landlord with a security deposit; the parties provided the number of the arbitration file which concluded the issue of the return of the security deposit. The number of the file appears on the first page of this decision.

The parties agreed on the following. On March 18, 2018 the landlord informed the tenants the property in which the unit was located was up for sale. On March 30, 2018, the landlord informed the tenants he had sold the property.

On April 3, 2018, the landlord informed the tenants by text they had to leave by June 1, 2018.

The landlord acknowledged that in the text on April 3, 2018, he provided the notice under section 49(5) of the *Act*; that is, the tenants had to leave the unit because he had sold the property and the purchaser intended to occupy it. The landlord acknowledged he did not provide a full two months' notice as required under the *Act*.

The tenants testified they accepted the notice and started looking for a new place to live right away. They vacated the unit on May 15, 2019.

The parties agreed the tenants paid rent for the month of May 2019 and the tenants do not owe any outstanding rent.

The landlord agreed during the hearing that he promised to pay the tenants \$550.00 toward their moving expenses and he agreed to a monetary award in this amount.

The landlord testified he was aware of the provisions of section 51(1) of the *Act* requiring the landlord to pay the tenant compensation in the amount of one month's rent when a landlord provides notice under section 49(5). The landlord acknowledged the tenants had requested the compensation and that he knew their forwarding address.

The landlord said he made a mistake in providing the notice as it turned out that the tenants could remain in the unit. The tenants did not accept the landlords evidence at the hearing that he so informed them; they stated the landlord warned them about the purchaser, urging them to vacate.

The landlord provided no other explanation for his refusal to provide the compensation as requested.

Analysis

The parties provided both documentary and affirmed oral testimony. I refer in my decision only to relevant and admissible portions of the evidence.

I will address the form of the section 49 notice and service by the landlord.

Section 49 provides that a landlord may issue a 2-month notice to end the tenancy under the circumstances set out in the section.

Section 49 states as follows:

- (5) A landlord may end a tenancy in respect of a rental unit if*
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,*
 - (b) all the conditions on which the sale depends have been satisfied, and*
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

Section 52 sets out the requirements for a section 49 notice, in which the landlord seeks to end a tenancy for the reasons set out above; the form must be in writing, be signed/dated by the landlord, provide the address of the unit, state the effective date of the notice and the grounds, and be in the approved form. The intention of this section is to remove doubt or ambiguity about the landlord's intentions and to assure there is clarity of communication between the parties.

In this case, the notice (the text message from the landlord to the tenants on April 3, 2018) is deficient in several respects in failing to comply with section 52. However, section 68 allows me to amend a section 49 notice that does not comply with section 52 if I am satisfied that the person receiving the notice knew, or should have known, the

information that was omitted from the notice and, in the circumstances, it is reasonable to amend the notice.

Section 68 states as follows:

68 (1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,

(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or

(b) set aside or amend a notice given under this Act that does not comply with the Act.

[emphasis added]

Pursuant to section 68 and considering both the circumstances and the testimony of the parties, I find I am satisfied that the person receiving the notice, the tenants, knew the information that the landlord omitted from the notice and that, in the circumstances, it is reasonable to amend the notice.

I reach this decision considering several factors in the circumstances. The landlord provided the notice in this case by text which he sent on April 3, 2018 instructing the tenants to leave on June 1, 2016. The landlord acknowledged sending the text as a notice to the tenants; the tenants acknowledged receiving the text and accepting the notice. The parties intended this to be communication of a notice, both given and received. The parties acknowledged texting as a common method of communication. I find that there is no doubt in either party's mind that the notice related to the unit the address of which was well known to the parties. There was no ambiguity or room for doubt in the message as intended, and as understood. Further, the tenants acted immediately on the notice and started looking for a new place to live.

I find the text message to be akin to writing as neither party questioned the authenticity and origin of the text. I further find the date of the notice to be apparent to both parties, both in terms of the date on which it was provided and on the effective move-out date.

I accordingly amend the section 49 notice and find that it complies in the amended form with section 52.

Section 88 sets out how a party is to provide another party with documents such as the section 49 notice. Under section 71(2)(b), I may find that a party has sufficiently served a document on the other.

As stated above, the landlord provided notice to the tenants by text on April 3, 2018 which is not a form of service listed in section 88. Nevertheless, considering the evidence and the circumstances described above, I find that the landlord sufficiently served the tenants with the notice pursuant to section 71(2)(b) for the reasons above stated.

Compensation

In these circumstances, the service of a section 49 notice to end tenancy, the *Act* sets out the compensation payable by the landlord to the tenants. Section 51(1) states:

Tenant's compensation: section 49 notice

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.**

[emphasis added]

The parties agreed the tenants paid rent for the entire time they occupied the unit. The landlord acknowledged he did not provide the compensation under section 51(1).

Considering the evidence submitted, I find the tenants have met the burden of proof on a balance of probabilities that the landlord owed the tenants compensation in the amount of one month's rent (\$1,700.00) pursuant to section 51(2). I accordingly grant the tenants a monetary award in the amount of \$1,700.00.

Considering the evidence submitted, I find the tenants have met the burden of proof on a balance of probabilities that the landlord owed the tenants compensation for moving expenses in the amount of \$550.00. I find the landlord agreed to compensate the tenants in this amount and repeated this promise at the hearing. I accordingly grant the tenants a monetary award in the amount of \$550.00.

As the tenants have been successful in their application, I grant the tenants reimbursement of the cost of the filing fee of \$100.00.

In summary, my award to the tenants is **\$2,350.00** calculated as follows:

ITEM	AMOUNT
One month's compensation – section 51(2)	\$1,700.00
Moving costs – as agreed by landlord	\$550.00
Reimbursement of the filing fee	\$100.00
Monetary Award Tenants	\$2,350.00

Conclusion

I order the landlord to pay to the tenants the sum of **\$2,350.00** pursuant to the *Residential Tenancy Act*.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: March 14, 2019

Residential Tenancy Branch