



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT OLC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for the landlord to comply with the Act, Regulations or Tenancy Agreement pursuant to section 62; and
- Authorization to recover the filing fees from the landlord pursuant to section 72.

Both parties attended the hearing. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. I find the landlord deemed served with the documents, pursuant to sections 89 and 90 of the Act.

The tenant denies receiving the landlord's evidence. The landlord testified he was instructed by the tenant to send documents to the tenant's last address, the rental unit, and it would automatically be sent by Canada Post to his new address. This was not disputed by the tenant. The landlord sent his evidence by registered mail to the tenant's last address and provided to me the tracking number, listed on the cover page of this decision. I find the tenant deemed served with the landlord's evidence in accordance with rule 3.15 of the Rules of Procedure and section 71 of the Act.

Issue(s) to be Decided

Is the tenant entitled to compensation for being served with a Two Month Notice to End Tenancy for unpaid rent?

Can the tenant recover the filing fee for this application?

Background and Evidence

The tenant provided a copy of the tenancy agreement. The fixed term tenancy began in March 2017 with rent set at \$950.00 per month payable on the first day of the month. A security deposit in the amount of \$400.00 was collected by the landlord which he still holds.

The tenant provided the following undisputed testimony. He paid rent up to and including March 2019. On February 19, 2019, he was served with a Two Month Notice to End Tenancy for Landlord's Use ("Notice") with an effective date of April 30, 2019. In accordance with the Notice, the tenant moved out at the end of April and did not pay rent for that month. He understood from the Notice that he was entitled to not pay rent for the last month of his tenancy and be compensated with the equivalent of one month's rent. He filed his application for dispute resolution seeking compensation on April 11, 2019.

Analysis

The tenant relies on section 51(1) of the Act which reads:

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.

Section 51(1.1) of the Act reads:

A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Section 51(1) and 51(1.1) are reiterated on the second page of the Notice which reads:

If this Notice was served under the reasons for landlord's use of property, on or before the effective date of this Notice, your landlord has to compensate you an amount equal to one month's rent payable under your tenancy agreement. **You may withhold your last month's rent instead of being paid compensation.** If you have already paid your last month's rent, your landlord has to refund you that amount.
(emphasis added)

As the tenant has withheld the last month's rent instead of being paid compensation, I find the landlord has complied with section 51 of the Act. The tenant's application for compensation is dismissed.

As the tenant was not successful in his claim, he is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application is dismissed 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: May 30, 2019

Residential Tenancy Branch