



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 s49 notice to end tenancy and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. The landlord's agent attended the hearing to assist the landlord.

As both parties were in attendance I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence and stated that he had uploaded his evidence to his electronic file but had not served the tenant with any evidence of his own. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*. Since the landlord did not serve the tenant with a copy of his evidence, the landlord's evidence was not used in the making of this decision.

Issues to be Decided

Is the tenant entitled to compensation pursuant to a s49 notice and the filing fee?

Background and Evidence

The tenancy began in March 2017 for a fixed term ending February 28, 2018 and would continue as a month to month tenancy after the end date of the fixed term. The monthly rent at the end of the tenancy was \$1,900.00. On November 30, 2017, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property.

The effective date of the notice as stated on the notice to end tenancy was February 28, 2018. The reason for the notice was that the landlord or the landlord's family intended to move into the rental unit.

On January 16, 2018, the tenant gave the landlord notice to end the tenancy effective February 01, 2018. The landlord reminded the tenant that she was in a fixed term tenancy ending February 28, 2018 and informed her that she was not entitled to compensation pursuant to s.49. Both parties contacted the Residential Tenancy Branch Office to obtain information.

The tenant stated that she moved out on February 01, 2018 but did not hand over possession of the rental unit until March 01, 2018. The tenant testified that she held onto possession of the unit as the landlord told her she was not entitled to compensation in the form of rent for the last month of the tenancy. The tenant agreed that she did not pay rent for February 2018.

The tenant made this application because she believes that she is entitled to compensation pursuant to s.49

Analysis

The tenant received the notice on November 30, 2017 with an effective date of February 28, 2018. On January 16, 2018, the tenant gave notice to end the tenancy effective February 01, 2018. Pursuant to s50(1) of the *Residential Tenancy Act*, if a landlord serves a tenant with a section 49 notice (for landlord's use of property), 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. Section 50(3) states that a notice to end tenancy under section 50(1) does not affect the tenant's right to compensation.

Therefore by providing notice on January 16, 2018, the tenant gave adequate notice to end the tenancy effective February 01, 2018 and is still entitled to compensation in the amount of one month's rent. However, the tenant was in a fixed term tenancy and therefore could not end the tenancy prior to the end date of the fixed term which is February 28, 2018

The tenant testified that she did move out on February 01, 2018 but did not hand over fully vacant possession of the rental unit until February 28, 2018. The tenant did not pay rent for February 2018.

Since the tenant had not handed over the rental unit to the landlord before March 01, 2018 and did not pay rent for February 2018, I find that she has been adequately compensated for being served a notice under s49 of the *Residential Tenancy Act*

Since the tenant has not proven her claim, she must bear the cost of filing her own application.

Conclusion

The tenant's application is dismissed.

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: June 10, 2019

Residential Tenancy Branch