



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee paid for this application.

The listed tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed receiving the tenant's evidence and confirmed that he did not provide evidence for the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation and to recover the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the tenant, and confirmed during the hearing, shows that the tenancy began on December 1, 2017, for a beginning monthly rent of \$1,500.00, and a security deposit paid of \$750.00.

The landlord has returned the tenant's security deposit.

The tenant submitted that they received a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), from the landlord. The Notice, submitted into evidence, was dated March 13, 2019, and had an effective move-out date of May 1, 2019. The reason listed by the landlord for ending this tenancy was that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenant provided a copy of the Notice.

The tenant submitted that they elected to move out early and sent the landlord a 10 day Notice on March 28, 2019, for a move-out date of April 7, 2019. The tenant confirmed they vacated the rental unit on April 7, 2019. The tenant submitted that they paid the monthly rent of \$1,500.00 for April 2019, and submitted a document titled "bank confirmation for rent paid".

The tenant provided a copy of the 10 day Notice, which was dated March 28, 2019, and which also cited section 50 of the Act.

The tenant's monetary claim is \$1,000.00, comprised of the balance of the monthly rent paid for April 2019, for the period of time after they vacated on April 7, 2019.

Landlord's response-

The landlord agreed that he received the tenants 10 day Notice, but that they moved out on May 7, not April 7, 2019. The landlord submitted that the tenants did not pay rent for May 2019, which was their compensation for receiving the Notice.

The landlord submitted that he had conversations with the male tenant about moving, and he agreed with him they could move anytime during the months of April and May 2019, as he was moving his children into the rental unit, at no rush.

Tenant's rebuttal-

The tenant asked why the landlord would not kick the tenants out if they did not move when they said they would, on April 7, 2019. The tenant said the landlord would not let them live there for free.

Analysis

Based upon the oral and written relevant evidence and a balance of probabilities, I find as follows:

Under section 51(1) of the Act, 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 50 of the Act allows the tenant to end the tenancy earlier than the effective move-out date listed on the Notice, with a 10 day notice to the landlord.

In this case, the tenant has the burden of proof to substantiate their claim on a balance of probabilities.

After considering the evidence, I find the tenant has not submitted sufficient evidence to support their monetary claim. While the tenant said they vacated the rental unit on April 7, 2019, the landlord said they did not.

The tenant did not submit proof that they moved out of the rental unit on April 7, which I find could easily have been documented by receipts for moving or transportation costs, a copy of their new tenancy agreement with a start date for the new place they said they found, or any witness statements. Also, the male tenant was not present to corroborate their move-out date or to respond to the landlord's recounting of their conversations.

Additionally, while the tenant labeled a page of their evidence that it was proof of payment of rent, I note that the document was for a payment of \$1,500.00 sent March 1, 2019, not April 2019.

Without separate proof that the tenants vacated the rental unit on April 7, 2019, or paid rent for April 2019, I am left with disputed oral testimony between the parties. I find that

disputed testimony does not sufficiently meet the applicant's burden of proof on a balance of probabilities.

I therefore dismiss their monetary claim for \$1,000.00, without leave to reapply.

Conclusion

The tenants' application for monetary compensation is dismissed, for the reasons given above.

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: August 28, 2019

Residential Tenancy Branch