



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 03, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed.

The Tenant appeared at the hearing with the Representative. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and evidence.

The Landlord testified that she received the hearing package and evidence the week of the hearing in her mailbox. The Landlord testified that she had been away from July 30, 2019 to September 09, 2019. The Landlord sought an adjournment given the timing of service.

The Representative testified that the hearing package and evidence were originally sent to the Landlord by registered mail on June 10, 2019. The Representative confirmed the address the package was sent to and the Landlord acknowledged this was her address at the time. The Representative testified that the package was sent a second time by regular mail. The Representative did not agree to an adjournment.

The Tenant submitted evidence of service including a photo of the package with Tracking Number 1 on it. It shows the package was sent to the Landlord’s address and returned as unclaimed.

I looked Tracking Number 1 up on the Canada Post website which shows the following. The package was sent June 10, 2019. Notice cards were left June 11, 2019 and June 20, 2019. The package was unclaimed and returned to sender July 12, 2019.

Based on the testimony of the Representative, photo submitted and Canada Post website information, I find the hearing package and evidence were sent to the Landlord by registered mail June 10, 2019. I find the package was served in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). I also find the Tenant complied with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure in relation to the timing of service.

The Landlord testified that she did not get the notice cards left by Canada Post. I do not accept this given the Canada Post website information showing two notice cards were left in relation to the package. Further, the Landlord did not submit any evidence to support her testimony on this point.

The Landlord is not permitted to avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the hearing package and evidence June 15, 2019, well before the hearing. Given this, I denied the Landlord an adjournment and proceeded with the hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

Background and Evidence

The Tenant sought \$850.00, the equivalent of one month's rent, under section 51 of the *Act* because she was served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started August 01, 2018 and was a month-to-month tenancy. Rent was \$850.00 per month due on the first day of each month.

The parties agreed the tenancy ended November 30, 2018.

The Tenant submitted a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 01, 2018 (the "Notice"). It has an effective date of December 31, 2018.

The Representative testified as follows. The Tenant was served with the Notice November 01, 2018. As stated on the Notice, the Tenant was entitled to the last month of rent free. The Tenant never received this from the Landlord.

In relation to the end of the tenancy, the Representative testified that she asked the Landlord if the Tenant could vacate the rental unit earlier after the Tenant had been served with the Notice and the Landlord agreed to this. She said the Tenant found a new place for December 01, 2018 so moved before the effective date of the Notice. The Representative testified that no other notices to end tenancy were served on the Tenant. She testified that the Tenant did not provide written notice to the Landlord.

The Landlord agreed the Notice was served on the Tenant around November 01, 2018.

The Landlord testified as follows. She also served the Tenant with a One Month Notice to End Tenancy for Cause on November 01, 2018. She tried to get the Tenant to agree to the Notice being withdrawn or cancelled but the Tenant would not agree to this. The Tenant paid rent up to the end of the tenancy. She did not give the Tenant one month's rent as compensation for the Notice.

The Landlord took the position that she should not have to compensate the Tenant for one month's rent because she gave the Tenant the incorrect notice to end tenancy when she issued the Notice as she should have given the Tenant a One Month Notice to End Tenancy for Cause. She said she corrected herself after issuing the Notice by issuing a One Month Notice to End Tenancy for Cause.

In reply, the Tenant testified that she was never served a One Month Notice to End Tenancy for Cause. She also testified that she never agreed to the Notice being withdrawn.

Analysis

Section 51 of the *Act* states:

51(1) A tenant who receives a notice to end a tenancy under section 49...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.

Policy Guideline 11 deals with withdrawal of notices to end tenancy and states:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

Given the agreement of the parties, I find the Tenant was served with the Notice around November 01, 2018.

Given the testimony of the parties, there is no issue that the Tenant did not agree to the Notice being withdrawn or abandoned. Therefore, I find the Notice was never withdrawn or abandoned and remains valid.

Pursuant to the Notice and section 51(1) of the *Act*, the Landlord was required to compensate the Tenant the equivalent of one month's rent. Given the testimony of the parties, there is no issue the Landlord did not give the Tenant this compensation. I find the Tenant is entitled to this compensation. The Landlord must pay the Tenant \$850.00.

I acknowledge that the Tenant vacated prior to the effective date of the Notice. Further to section 50(3) of the *Act*, I do not find this affects the Tenant's entitlement to compensation.

I note that, whether the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause or not, this does not affect the analysis. The Landlord served the Tenant with the Notice. The Notice remains valid. The Tenant is entitled to

compensation under section 51 of the *Act* regardless of whether she was subsequently served with another notice to end tenancy.

The Tenant is entitled to \$850.00 in compensation and I issue the Tenant a Monetary Order in this amount.

Conclusion

The Tenant is entitled to compensation under section 51 of the *Act* in the amount of \$850.00. I issue the Tenant a Monetary Order in the amount of \$850.00. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: September 27, 2019

Residential Tenancy Branch