



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNRL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for unpaid rent, pursuant to sections 26 and 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord personally served the tenants with his application for dispute resolution sometime around June 20, 2019, but neither party were sure on the date. I find that the landlord's application for dispute resolution was made in accordance with section 89 of the *Act*.

Issue to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in July of 2014 and ended on July 1, 2019. Monthly rent in the amount of \$1,240.00 was payable on the first day of each month up to and including May of 2019. Both parties agree that the landlord served the tenants with a Notice of Rent Increase on April 30, 2019 which increased the rent to \$1,265.00 effective June 1, 2019.

Both parties agree that the landlord gave notice to end the tenancy in January of 2019 effective April 30, 2019. The Notice to End Tenancy was not on an approved Residential Tenancy Branch form but typed up on a piece of paper. The eviction notice was entered into evidence.

Both parties agree that that on May 13, 2019 the tenants provided the landlord with a letter, which states in part:

This is to inform you that we will be leaving by July 1, 2019 as per your illegal eviction notices....

We are entitled to 60 days rent free for a reno eviction. We wish to evoke this Act.

Both parties agree that tenant R.D. and the landlord signed the bottom of the May 13, 2019 letter. The tenants testified that by signing this document, the landlord agreed to provide them with two months free rent. The landlord testified that he signed the bottom of the page to confirm receipt of the tenants' notice to vacate the subject rental property, but he never agreed to provide them with two month's free rent. The landlord testified that he agreed to provide the tenants with one month's free rent.

Both parties agree that the tenants did not pay rent for May or June 2019.

Both parties agree that on May 14, 2019 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid rent (the "10 Day Notice"). The tenants filed an application to dispute the 10 Day Notice with the Residential Tenancy Branch and provided the file number for that file in the hearing. The 10 Day Notice was cancelled because the landlord hung up part way through the hearing and did not prove his claim. The landlord applied for review consideration of the above decision as he claimed that he did not hang up but was disconnected. The landlord's application for review consideration was dismissed. The file number for the above file is located on the cover page for this decision.

Analysis

Section 51(1) of the *Act* states that 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.

I find that the tenants did not receive a notice to end tenancy under section 49 of the *Act* and are therefore not entitled to receive the compensation set out in section 51 of the *Act*. I find that the Notice to End Tenancy issued by the landlord did not accord with the requirements of the *Act* and was therefore not enforceable.

I find that the fact that the landlord signed the May 13, 2019 letter does not mean that he agreed with its contents. This finding is supported with the actions of the landlord when he served the

tenants with the 10 Day Notice on May 14, 2019. I note that the letter set out the tenants' position but did not state that the landlord agreed to any specific term.

Based on the testimony of the landlord, I find that he agreed to provide the tenants with one months free rent, that being June 2019, and that May 2019's rent was still owed by the tenants. Again, this finding is supported by the landlord's issuance of the 10 Day Notice for May 2019's rent. I therefore find that the tenants owe the landlord, pursuant to section 26 of the *Act*, \$1,240.00 for May 2019's rent.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$1,240.00.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this 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: October 01, 2019

Residential Tenancy Branch