



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee.

The Tenant, the Landlord, the Landlord’s Counsel S.E. and J.M., as well as the Landlord’s Agent attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlord by registered mail on June 5, 2019. The Landlord confirmed receipt. The Landlord testified that he served the Tenant with his documentary evidence by registered mail July 8, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 1, 2018. The Tenant paid rent in the amount of \$3,500.00 to the Landlord each month. The Tenant paid a security deposit in the amount of \$1,750.00 as well as a pet damage deposit in the amount of \$1,750.00. The Tenancy ended on January 31, 2019.

The Tenant stated that on October 31, 2018 he received a text message from the Landlord stating that he intends on occupying the rental unit, therefore was seeking to end the tenancy. The Tenant stated that on October 31, 2018 he received a Two Month Notice to End Tenancy for Landlord's Use dated October 31, 2018 (the "Two Month Notice"). The Tenant stated that the Two Month Notice had an effective vacancy date of January 1, 2019. The Tenant stated that he did not accept the Two Month Notice from the Landlord as it was served to him by e-mail, which is not a recognized form of service in accordance with the *Act*. The Tenant stated that it was his intent to remain in the rental unit and did not want to move.

The Tenant stated that the parties came together on November 26, 2019 at which point the parties signed a Mutual Agreement to End Tenancy. The Tenant stated that he agreed to vacate the rental unit on January 31, 2019 in exchange for one-month free rent. The Tenant stated that it was not his intent to end the tenancy. He stated that he signed the Mutual Agreement to End Tenancy on the basis that the Landlord intended to occupy the rental unit.

The Tenant stated that the Landlord has not used the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice. As such, the Tenant is seeking compensation in the amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement.

In response, the Landlord's counsel submitted that the Two Month Notice to End Tenancy dated October 31, 2018 was cancelled as a result of the Landlord not serving the Two Month Notice in accordance with the Act. The Landlord's Counsel submits that the parties agreed that the Two Month Notice was set aside and that the parties came together and signed a Mutual Agreement to End Tenancy on November 26, 2018 with an effective vacancy date of January 31, 2019.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 51(2) of the Act states that in addition to the amount payable under subsection one, if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord, must pay the tenant an amount that is the equivalent to 12 times the monthly rent payable under the tenancy agreement.

In this case, I find that the parties agreed that the Landlord did not serve the Two Month Notice to the Tenant in accordance with the Act. I accept that the Tenant did not accept the Two Month Notice in an attempt to extend the tenancy. I find that at this point, the Two Month Notice was set aside. I accept that the parties came together on November 26, 2019 and signed a Mutual Agreement to End the Tenancy on January 31, 2019. I find that this agreement effectively ended the Tenancy.

I find that the Tenant's Application for compensation under Section 51 of the *Act* is only applicable in relation to valid notices which were served pursuant to Section 49 of the Act. As such, I find that the Tenant is not entitled to compensation pursuant to Section 51 of the Act and dismiss the Tenant's Application without leave to reapply. As the Tenant was not successful with his Application, I find that he is not entitled to the return of the filing fee.

Conclusion

The Tenant is not entitled to compensation under Section 51 of the Act. 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: October 25, 2019

Residential Tenancy Branch