



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNSD**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The landlord attended the hearing as did the tenant, TJ ("tenant"). The co-tenant, HB did not attend the hearing, although the co-tenant had that tenant on a separate line. As both parties were in attendance, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution. He did not acknowledge receiving the tenant's evidence. The tenant acknowledged receipt of the landlord's evidence.

The tenant testified she served the evidence together with the Application for Dispute Resolution by registered mail on July 26, 2019 and provided a tracking number as evidence. The number is recorded on the cover page of this decision. I am satisfied the landlord was deemed served with the Application for Dispute Resolution and evidence on July 31, 2019 pursuant to sections 89 and 90 of the *Act*.

Preliminary issue

During the hearing, it was determined that the tenants had not provided a forwarding address in writing to the landlord as required by sections 38 and 39 of the *Act*. The tenants provided this to the landlord during the hearing and the landlord confirmed he received it. In accordance with section 71 of the *Act*, I deem the forwarding address was provided on November 1, 2019 and the landlord has 15 days to comply with section 38(1) of the *Act* and either repay it or make an application for dispute resolution claiming against the security deposit. The tenant's application for a return of the security deposit

pursuant to section 38 of the *Act* is dismissed with leave to reapply if the landlord does not comply with section 38(1) within 15 days from the date of the hearing, November 16, 2019.

Issue(s) to be Decided

Is the tenant entitled to:

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. This tenancy involves the basement unit of a home with an upper unit occupied by the landlord and the basement unit occupied by the tenants. The tenancy began some time in mid-October 2018. No formal tenancy agreement was signed between the parties. Rent was set at \$1,500.00 per month and a security deposit of \$750.00 was collected by the landlord which he continues to hold.

The tenant testified there were altercations between the landlord and tenants and the police were called to assist on occasions. On April 2, 2019, the landlord provided the tenants with a letter advising them his mother is ill and that he requires the basement of the home. The letter states he is giving the tenant's two months' notice to move out. The effective (move-out) date is not listed on the letter, which was provided as evidence in these proceedings.

On April 18, 2019, the tenants wrote a letter in response. In this letter, the tenants indicate they will be vacating the premises on Saturday, April 20th and ask the landlord to conduct an inspection with them when they leave. No forwarding address is listed on this letter, produced as evidence for the proceedings.

The tenant testified that the landlord did not provide her with 2 months compensation for serving her with the letter of April 2nd which she submits is a Two Month Notice to End Tenancy for Landlord's Use. The tenant also testified she did not provide the landlord with a forwarding address because she did not want the landlord to know where she and her family had moved to, following the advice of the police.

Although she did not provide any testimonial evidence regarding this issue or direct me to any documentary evidence regarding it, the tenant also claims she is entitled to 12 months compensation for the landlord re-renting the rental unit after they moved out. I note here that the tenant acknowledged she did not have any of the documents she supplied for the hearing in front of her to look at during the hearing. I also note here that I had to direct the tenant more than once to provide testimony related to the monetary issues she is claiming for and not to digress into a narrative of events that may or may not relate to the issues to be decided.

The landlord provided the following testimony. He did not know he was required to provide formal notice on the Residential Tenancy Branch form. He testified that he gave the tenants 3 months notice to move out and the tenants decided to move out early on their own. At the conclusion of the tenancy, the tenants damaged the rental unit, but he preferred to repair the damage himself and not file for dispute resolution to seek compensation. The landlord testified he was not given a forwarding address for the tenants but acknowledged receiving it during this hearing.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Pursuant to section 49(7), A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52: Form and content of notice to end tenancy

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Pursuant to section 50(1), If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[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. Pursuant to section 50(3) A notice under this section does not affect the tenant's right to compensation under section 51.

Lastly, section 51 reads:

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. The landlord must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Highlighting section 49(7) and 52(e) of the *Act*, **A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*. In order to be effective, a notice to end a tenancy must be in writing and must, when given by a landlord, be in the approved form.**

The parties agree the landlord did not serve the tenants with a notice to end tenancy in the approved form. The letter provided to the tenants on April 2, 2019 is missing the requirements as outlined in section 52 of the *Act* and I determine that the letter does not comply with sections 49(7) and 52(e) and is therefore not a Notice to End Tenancy.

Consequently, I find the tenants were not served with an effective Notice under section 49 of the *Act*. I find the tenancy ended pursuant to the tenant's notice to end tenancy dated April 18, 2019, with an effective date of April 20, 2019.

Turning to section 51, I note the following,

"A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive..." As stated above, the tenants did not receive a notice to end tenancy under section 49 and therefore they are not entitled to any compensation under section 51 of the *Act*.

The tenants' application is therefore dismissed.

As the tenants' application was not successful, the tenants are not entitled to recover the filing fee for the cost of this application.

Conclusion

The application for a monetary order pursuant to section 67 is dismissed.

The tenants' application for a return of the security deposit pursuant to section 38 of the *Act* is dismissed with leave to reapply if the landlord does not comply with section 38(1) within 15 days from the date of the hearing, November 16, 2019.

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: November 02, 2019

Residential Tenancy Branch