



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, FFT

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$1408
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord objected to proceeding with the hearing stating he has never been served with a copy of the Application for Dispute Resolution. He stated he is no longer living in Canada and refused to identify the country that he is living in. He testified he only became aware of the hearing because of the reminder notice sent out by e-mail to the parties.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to an address for service provided by the other party. It is deemed received 5 days after mailing. I determined the Tenant has sufficiently served the landlord with the Dispute Resolution/Notice of Hearing by mailing on August 23, 2019, by registered mail to the address for service provided by the landlord in the 2 month notice. I determined that the landlord has been sufficiently served as the landlord participated in the hearing, uploaded evidence to the file, made a number of submissions and was aware of the claim being made by the Tenant as there have been a number of e-mails. I determined pursuant to section 71(2) of the Act that there has been sufficient service.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The landlord and the tenant entered into a one year fixed term tenancy agreement that provided that the term would begin on December 1, 2016 end on November 30, 2017 and become month to month after that. The rent was \$1850 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$925 at the start of the tenancy. The rent was subsequently increased to \$1920 per month.

The Strata Corporation employed the Tenant. She had an agreement with the Strata Corporation that they would pay the entire rent to the landlord as part of her salary.

On September 11, 2018 the landlord served a two month Notice to End Tenancy on the Tenant that provided that the rental property had been sold and that the purchaser had requested in writing that the landlord provide vacant possession so that the purchaser or close family member could move in. The Notice to End Tenancy provided that the tenancy would end on November 30, 2018.

On November 5, 2018 the tenant served a 10 day Notice on the landlord that stated that she would be vacating on November 17, 2018.

The tenant vacated on November 17, 2018. The landlord paid the Strata Corporation \$512 being the rent for the period November 18, 2019 to November 30, 2018. The strata corporation paid this sum to the tenant.

The landlord and the strata corporation had an agreement there would be no further financial adjustments between them. The landlord testified that had he been aware the tenant would be making this claim he would have held back on a portion of the security deposit which he returned to cover damages caused by the tenant, the cost of a move-out fee and other expenses.

The Law::

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) 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. (my emphasis).**

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by

(a) 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, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

Analysis:

After carefully considering all of the evidence and the submissions of both parties I determined the Tenant is entitled to recover the claims that she is making for the following reasons:

- The tenancy agreement is between the landlord and the Tenant. The fact that a third party (the Strata Corporation) was paying the rent to the landlord does not relieve the landlord of his legal obligations under the Act.
- The landlord served a 2 month Notice to End on the Tenant. The Act provides where that occurs the landlord is responsible to pay the equivalent of one month rent to the tenant. The law imposes this obligation on the landlord and not on a third party who may have paid the rent.
- I do not accept the submission of the landlord that this amounts to unjust enrichment for the Tenant. The financial arrangement between the tenant and the strata corporation does not affect the legal obligations imposed on the landlord by the Act.
- I do not accept the submission of the landlord he is prejudiced as he would have held back on the payment of the security deposit had he known the Tenant would bring this claim. The landlord had a right to file an Application for Dispute Resolution against the Tenant making a claim for loss suffered by the landlord which is independent of the right to withhold the security deposit.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1408 plus the sum of \$100 in respect of the filing fee paid for a total of \$1508.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$1508.

This decision is final and binding on the parties.

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: December 17, 2019

Residential Tenancy Branch