



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT LAT LRE MNDCT OLC MNRL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for unpaid rent pursuant to section 67.

The tenant requested:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the

Act, I find that both the landlord and tenant were duly served with the Applications and evidence.

At the outset of the hearing both parties confirmed that the tenant had moved out in November of 2019. As the tenancy had ended, the tenant's application pertaining to this tenancy were cancelled with the exception of the monetary components of her claim.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Is the tenant entitled to monetary compensation for this tenancy?

Is the tenant entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on May 16, 2019. Monthly rent was set at \$1,100.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$550.00, which she still holds. The tenant testified that this tenancy ended on November 7, 2019, while the landlord testified that the tenancy ended on November 5, 2019.

The landlord testified that she had served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use on October 24, 2019 by way of posting the Notice on the tenant's door. The effective date on the 2 Month Notice was December 31, 2019. The landlord testified that the tenant failed to pay the November 2019 rent, and the landlord personally served the tenant with a 10 Day Notice for Unpaid Rent on November 2, 2019, with an effective date of November 12, 2019. The landlord testified that the tenant moved out on November 5, 2019 without proper notice, and without paying the November 2019 rent. The landlord is seeking a monetary order for the November 2019 rent.

The tenant testified that the landlord would enter the rental unit without her permission, and this has been taking place since the beginning of the tenancy. The tenant testified that she was harassed for several months, and was served with a 2 Month Notice. The

tenant testified that she gave notice on November 4, 2019 by way of email and by way of a handwritten notice that she would be vacating the rental unit earlier than the effective date of the 2 Month Notice. The email stated that the tenant will be moved out by November 8, 2019. The tenant provided a copy of the email dated November 4, 2019 in her evidentiary materials. The tenant testified that she provided a forwarding address on November 3, 2019 and moved out on November 7, 2019. The tenant's witness provided sworn testimony that the tenant moved out on November 7, 2019.

The tenant applied for a monetary order as set out in the table below:

Item	Amount
Compensation for 2 Month Notice	1,100.00
Return of Security Deposit	550.00
Compensation for Landlord's failure to return deposit	550.00
Filing Fee	100.00
Total Monetary Order Requested	\$2,300.00

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, the tenant's testimony is that she had moved out on November 7, 2019. The landlord filed her application for dispute resolution on November 20, 2019, 13 days later. I find the landlord filed her application within the required time period, and therefore I dismiss the tenant's application for compensation under section 38 of the *Act* without leave to reapply.

The tenant testified that she gave written notice to end the tenancy in accordance with the *Act*, as she was served with a 2 Month Notice by the landlord.

Section 45 of the *Residential Tenancy Act* reads in part as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In the circumstance that the tenant is served with a 2 Month Notice for Landlord's Use under section 49 of the *Act*, the tenant may end the tenancy early.

Section 50 of the *Act* states:

- 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.*

I find that the tenant gave written notice to the landlord on November 4, 2019, the date of the email sent to the landlord, and vacated the rental unit on November 7, 2019. By giving written notice on November 4, 2019, I find that the tenant failed to give at least 10 days' written notice to end tenancy on a date that is earlier than the effective date of the landlord's notice as required section 50 of the *Act*. In the case that the tenant gives notice under section 50 of the *Act*, the tenant is also obligated to pay the landlord the

proportion of rent due to the effective date of the tenant's notice. In this case I find that the tenant failed to give proper notice to the landlord as required by section 50 of the *Act*, or pay any rent to the landlord for the month of November 2019.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I find that the tenant failed to pay the November 2019 rent, and I find that the tenant did not have permission to withhold or deduct any rent. Accordingly I find that the landlord is entitled to a monetary order for unpaid rent for the month of November 2019.

Section 50(3) of the *Act* states that "*A notice under this section does not affect the tenant's right to compensation under section 51* [tenant's compensation: section 49 notice]." Although the tenant was served with a 2 Month Notice for Landlord's use, I find that the tenant did not give proper notice under section 50(3) of the *Act* to end the tenancy on an earlier date.

While the tenant did notify the landlord of the termination of this tenancy, the tenant did not end it in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenant did not comply with the *Act* in ending this periodic tenancy as they gave less than one month's notice as required by section 45(1) of the *Act*, and less than 10 days' notice as required by section 50 (1) of the *Act*. I, therefore, find that the tenant vacated the rental unit contrary to sections 45 and 50 of the *Act*.

I find that this tenancy had ended on the basis of the tenant's own decision to move out, and not on the basis of the 2 Month Notice. Accordingly, I am not allowing the tenant's application for monetary compensation pursuant to section 51 of the *Act* as the tenant had chosen to vacate the rental unit prior to the effective date of the 2 Month Notice, without giving proper notice to the landlord under the *Act* to do so. This tenancy had ended on November 7, 2019 after that tenant had decided to end it, and not on the

basis of a Notice given under section 49 of the *Act*. The tenant's application for compensation is dismissed without leave to reapply.

As the tenant was not successful with her claim, the tenant's application to recover the filing fee is dismissed without leave to reapply.

The landlord continues to hold the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's deposits in partial satisfaction of the monetary claim.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I allow the landlord's application to recover the rent for November 2019.

I issue a Monetary Order in the amount of \$550.00 in the landlord's favour as set out in the table below.

November Rent	\$1,100.00
Less Security Deposit Held	-550.00
Total Monetary Award	\$550.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: January 9, 2020

Residential Tenancy Branch