



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 the Tenant's application filed on November 10, 2019, for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to request a monetary order for compensation under the Act and to recover the cost of the filing fee. The matter was set for a conference call.

The Tenant and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Issues to be Decided

- Is the Tenant entitled to compensation pursuant to section 51 of the Act?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on July 1, 2018, as a one-year fix term, that rolled into a month to month at the end of the initial term of the tenancy. Rent in the amount of \$2,306.25 was to be paid by the first day of each month, and the Tenant paid the Landlord a \$1,125.00 security deposit at the beginning of the tenancy. The

Landlord submitted a copy of the tenancy agreement into documentary evidence. The Tenant testified that one rent increase had been issued during her tenancy. The Tenant submitted a copy of the rent increase documentation into documentary evidence

Both parties testified that the Tenant received the Two-Month Notice to End Tenancy for Landlord's Use of Property on July 23, 2019. The notice indicated an effective end of tenancy date of September 30, 2019. Both parties submitted a copy of this notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, child of that individual's spouse).*

The Tenant testified that they moved out of the rental unit, in accordance with the Notice on October 2, 2019, and that the move-out inspection had been conducted and the security deposit had been returned in accordance with the *Act*. The Tenant also testified that the one-month rent compensation due to them had been used for the September 2019 rent.

The Tenant testified that as of November 6, 2019 and that the Landlord had only moved a few boxes into the rental unit. The Tenant testified that she believes that the Landlord is currently living in the rental unit but that the Landlord did not move in within a reasonable amount of time, and therefore, the Tenant is requesting the 12-month compensation due under the *Act*.

The Landlord testified that they started moving into the rental unit as of October 5, 2019, but that due to the need to completed repairs, and paint the rental unit, that they did not finish moving in until November 15, 2019.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51 of the *Act*. I accept the agreed-upon testimony of these parties that the Tenant received the Landlord's Two-Month Notice to end the tenancy on July 23, 2019, and that the Tenant moved out accordance with that notice as of October 2, 2019.

In this case, the Tenant is seeking compensation pursuant to section 51(2) of the *Act*, which states the following:

Tenant's compensation: section 49 notice

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice 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.

I accept the testimony of the Tenant that the Landlord served the Notice to end the tenancy in compliance with sections 49(3), and that the Notice had an effective date of September 30, 2019. I also accept the testimony of the Tenant that they received the one-month compensation due to the Tenant, pursuant to section 51(1) of the *Act*, in the form of rent for September 2019.

In regard to the Tenant's claim pursuant to section 51(2) of the *Act*, I have reviewed the testimony and documentary evidence submitted by the Tenant and the Landlord. I find, on a balance of probabilities, that the Landlord has used the property for the purpose stated on the Notice.

I acknowledge that the Landlord did not finish moving into the rental unit until November 15, 2019. However, I accept the Landlord testimony that they wanted to complete repairs and paint the rental unit before they finished moving. I find that the Landlord did move in to the rental unit, within a reasonable period after the effective date of the notice and is currently using the rental unit for the stated purpose of the Notice.

Therefore, I find that the Tenant has not proven their claim under section 51(2) of the *Act*. Accordingly, I dismiss the Tenants' claim for compensation under section 51(2) of the *Act*.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in this

application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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: April 2, 2020

Residential Tenancy Branch