



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male landlord" did not attend this hearing, which lasted approximately 59 minutes. The female landlord ("landlord"), the landlords' agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords' agent confirmed that the male landlord and the landlord were both co-owners of the rental unit and that the landlord had permission to represent the male landlord at this hearing (collectively "landlords"). The landlords' agent confirmed that she had permission to represent both landlords at this hearing.

The landlords' agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence package.

Both parties confirmed that they were ready to proceed with the hearing and they had no objections.

The tenant confirmed receipt of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 30, 2019 ("2 Month Notice"). Neither party provided a copy of the notice for this hearing. The tenant stated that the effective move-out date on the notice was November 30, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to add the name of the male landlord as a respondent party. The landlord, the landlords' agent and the tenant consented to this amendment during the hearing. Both parties agreed that the male landlord is a co-owner of the rental unit, his name was on the parties' written tenancy agreement even though he did not sign it, and he was a landlord performing landlord functions during this tenancy.

Both parties agreed that the landlords' agent and her brother are not co-owners of this rental unit, their names were not on the parties' tenancy agreement and they only engaged in some incidental landlord duties during this tenancy, but they were not the main landlords. Both parties agreed that the landlords' agent and her brother did not need to be added as respondent-landlords to this application.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 15, 2019 and ended on November 11, 2019. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlords returned the deposit in full to the tenant. A written tenancy agreement was signed by the tenant and the landlord.

The tenant seeks compensation under section 51(1) of the *Act*, stating that she is entitled to one month's free rent compensation of \$1,000.00, pursuant to the landlords' 2 Month Notice. The tenant also seeks to recover the \$100.00 filing fee paid for this application.

The tenant stated that she moved out of the rental unit due to the 2 Month Notice, which required her to vacate by November 30, 2019. She claimed that she did not receive the one-month free rent of \$1,000.00 for November 2019 pursuant to the 2 Month Notice. She said that she did not pay rent of \$1,000.00 to the landlords for November 2019 but she only lived there for 11 days, not the entire month. She claimed that she provided written notice, which she handed to the landlords' agent on October 28, 2019, to move out earlier on November 11, 2019. She maintained that she calculated the rent by dividing \$1,000.00 by 30 days in November 2019, multiplied by the 19 days she did not live there, for a total of \$632.00. The tenant confirmed that she paid rent in full to the landlords for September and October 2019.

The landlords dispute the tenant's application. The landlords' agent said that she did not receive the tenant's notice to move out until November 1, 2019, and there was no date for when she was moving out. She claimed that the tenant already received one month's free rent for November 2019, because she did not pay this rent to the landlords. She maintained that if the tenant had paid rent for November 2019, the landlords would have to refund the remaining 19 days that the tenant did not live in the rental unit, after November 11, 2019. She explained that since the tenant did not pay the rent, she is not entitled to compensation. She testified that the compensation was also not provided to the tenant because she caused damages in the rental unit. The landlords provided photographs and documentation of the damages to support their position.

Analysis

Section 51 of the *Act* entitles a tenant to compensation of one month's free rent pursuant to a 2 Month Notice. It states in part:

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.

Section 50 of the *Act* states the following with respect to ending the tenancy earlier than the effective date on the 2 Month Notice:

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].

I find that the tenant received a 2 Month Notice from the landlords and ended her tenancy pursuant to this notice earlier than the effective date of November 30, 2019. The landlords did not provide the tenant with one month's rent compensation pursuant to the 2 Month Notice. Although the tenant did not pay rent for November 2019 to the landlords, she vacated earlier on November 11, 2019, with at least 10 days' written notice to the landlords. I accept the tenant's testimony that she provided this notice to the landlords on October 28, 2019, even though the landlords' agent claimed that it was received on November 1, 2019.

Accordingly, I find that the tenant is entitled to one month's rent compensation of \$1,000.00 for November 2019, as per section 51 of the Act and the 2 Month Notice. Since the tenant lived in the rental unit for 11 days and did not pay rent during this time, I find that she is entitled to compensation of \$633.33 for the remaining 19 days from November 12 to 30, 2019 when she was not living in the rental unit. I have calculated this as follows: $\$1,000.00 / 30 \text{ days} \times 19 \text{ days} = \633.33 . The tenant maintained that she may have made an error in her calculation of \$632.00.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$733.33 against the landlord(s). The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(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: April 09, 2020

Residential Tenancy Branch