



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL (Landlord)
MNDCT, FFT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed the application January 29, 2020 (the “Landlord’s Application”). The Landlord sought compensation for damage to the rental unit, compensation for monetary loss or other money owed, to keep the security and pet damage deposits and reimbursement for the filing fee.

The Tenant filed the application April 27, 2020 (the “Tenant’s Application”). The Tenant sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord despite the hearing lasting 31 minutes.

Rule 7.3 of the Rules of Procedure (the “Rules”) states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the Landlord failed to attend the hearing, and the Tenant did attend and was prepared to address the Landlord’s Application, the Landlord’s Application is dismissed without leave to re-apply.

I note that the Landlord sought to keep the security and pet damage deposits. At the hearing, the Tenant testified that the Landlord has not returned these. The parties were involved in a previous hearing on File Number 1. The Arbitrator ordered the Landlord to pay the Tenant double the security and pet damage deposits. The decision was issued December 24, 2019. The Landlord was therefore required to return double the deposits to the Tenant and was not entitled to apply to keep the deposits on January 29, 2020. I would not have considered the Landlord's request to keep the security and pet damage deposits even if the Landlord had appeared at the hearing given the Landlord has already been ordered to return them.

I continued to hear the Tenant's Application. I explained the hearing process to the Tenant. The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord had not submitted evidence on the Tenant's Application. I addressed service of the hearing package and Tenant's evidence.

The Tenant testified that she served the hearing package and her evidence on the Landlord by email. The Tenant testified that she sent the hearing package April 27, 2020. The Tenant testified that she sent the evidence May 18 and 27, 2020. The Tenant testified that the Landlord did not reply to the emails. The Tenant testified that the parties did communicate by email during the tenancy. The Tenant testified that the Landlord never replied to her by email but accepted rent each month by e-transfer to the email address used.

The Director's Order issued March 30, 2020 permits email service and states in part:

- a document of the type described in section 88 or 89 of the Residential Tenancy Act...has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:
 - the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

I am satisfied based on the undisputed testimony of the Tenant that she sent the hearing package and evidence to the Landlord by email April 27, May 18 and May 27, 2020. Pursuant to the Director's Order, I am satisfied the Landlord was sufficiently served. Pursuant to the Director's Order, I am satisfied the Landlord received the hearing package April 30, 2020 and evidence May 21 and May 30, 2020. I find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service of the hearing package. I also find the evidence was served in sufficient time prior to the hearing.

Given I was satisfied of service, I continued with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the Tenant. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified as follows. There was no written tenancy agreement between the parties. There was a verbal tenancy agreement. The tenancy started June 01, 2015 and was a month-to-month tenancy. Rent at the end of the tenancy was \$1,300.00 due on the first day of each month.

The Tenant testified that the tenancy ended May 31, 2019.

The Tenant advised that she is seeking compensation under section 51 of the *Residential Tenancy Act* (the "Act").

The Tenant acknowledged that she did not receive a notice to end tenancy on the RTB form from the Landlord. The Tenant testified that she received a text message from the Landlord stating that he was going to move back into the rental unit and so she had to vacate. The Tenant testified that she vacated within 30 days.

The Tenant further testified as follows. She had a good relationship with the Landlord. She was not going to argue with the Landlord when he said he wanted to move back into the rental unit. She thought the Landlord was a reasonable person. It was difficult

to find housing. A month later the Landlord had not moved back in and had rented the unit to different tenants. She heard from neighbours that the Landlord did not move into the unit. She also spoke to the new tenant who confirmed the Landlord is not living in the unit. The Landlord is trying to take advantage of the system. The Landlord's actions are not acceptable. She does not believe the Landlord will not do this again to others. She had no intention of moving and would have stayed in the rental unit if the Landlord had not asked her to vacate.

Analysis

The Tenant sought compensation equal to 12 months of rent for a total of \$30,000.00. The Tenant confirmed she is seeking compensation under section 51 of the *Act*. The Tenant did not rely on any other section of the *Act* as a basis for the compensation sought.

Section 51 of the *Act* states:

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...

(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.

(emphasis added)

Section 51 of the *Act* only applies where a tenant has received a notice to end tenancy issued under section 49 of the *Act*.

Here, the Tenant was not issued a notice to end tenancy under section 49 of the *Act* as the Tenant was not issued a notice to end tenancy at all. The Landlord asked the Tenant to vacate, or told the Tenant to vacate, because he intended on moving back into the rental unit via text message. It was open to the Tenant to require the Landlord to issue a notice to end tenancy under section 49 of the *Act*. It was open to the Tenant to advise the Landlord that she would not move out unless she received a proper notice to end tenancy under the *Act*. The Tenant did not do so. The Tenant agreed to move out in the absence of a requirement under the *Act* to do so. I acknowledge that the Tenant may not have been aware of the notice requirements. However, parties are expected to be aware of their rights under the *Act*.

In the circumstances, the Tenant is not entitled to compensation under section 51 of the *Act* because the Tenant was never issued a notice to end tenancy under section 49 of the *Act*.

Given the Tenant was not successful in the Tenant's Application, I decline to award the Tenant reimbursement for the filing fee.

The Tenant's Application is dismissed without leave to re-apply.

Conclusion

The Landlord's Application is dismissed without leave to re-apply given the Landlord did not appear at the hearing to present evidence or argument as to the basis for the claims.

The Tenant's Application is dismissed without leave to re-apply as the Tenant is not entitled to the compensation sought.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 22, 2020

Residential Tenancy Branch