



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on November 24, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51; and,
- recovery of the filing fee.

Both parties attended the hearing and provided testimony. The Tenant confirmed receipt of the Landlord's evidence package, and he appeared to have all relevant and material evidence from the Landlord and did not identify any evidence that he was missing from the package he was served. Most of the Landlord's evidence was related to unrelated matters that she never applied for (cleaning, damage to the rental unit). The Landlord also confirmed receipt of the Tenant's application, notice of hearing, and evidence package.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 for money owed or damage or loss under the Act?

Background and Evidence

Both parties agreed that monthly rent was \$2,400.00 per month. The Tenant stated that on January 27, 2020, he received a text message from the Landlord which stated that she did not want to renew his lease, and that she and her mother would be moving back into the rental property. The Tenant stated he did not get a proper 2-Month Notice to End Tenancy for Landlord's Use on the government approved form. Rather, he took the text message from January 27, 2020, as equivalent.

The Tenant stated that he moved out at the end of April 2020, and never received 1 month free rent, pursuant to section 51(1). As such, he is seeking this amount on this application. The Tenant stated that it was not a mutual agreement to end the tenancy, and he only moved out because the Landlord stated she wanted to move back in. The Tenant pointed to section 10(2) of the Act to highlight that deviations from the form do not invalidate the form used.

The Tenant also stated that the text message he received complies with section 52 of the Act, as the Landlord intended to terminate the tenancy with the text message.

The Landlord stated that she never issued any formal Notice to End Tenancy, and as such, she should not have to pay compensation, which is only due when a valid notice is issued. The Landlord stated that she had a friendship with the Tenant, and had a series of conversations and discussions about how and when the Tenant would move out. The Landlord stated that she was trying to be nice by giving the Tenant extra time to move out.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant is seeking 1 month's compensation, pursuant to section 51(1) of the Act, (\$2,400.00).

After reviewing this application, and evidence provided, I note that the Tenant is arguing that the text message he received on January 27, 2020, is a valid 2-Month Notice to End Tenancy for Landlord's Use, despite the fact it was a text message, and that it was not on the approved government issued form. I asked the Tenant if he provided a copy

of the text message from January 27, 2020. However, he stated he did not provide a copy of this message as part of his evidence.

He pointed to the Landlord's evidence package, which he states contains the text message. However, upon review of the Landlord's evidence package uploaded to the RTB site, there is no copy of the text message from January 27, 2020. It does not appear the Landlord properly uploaded a copy of this text message, as the file labelled as the January 27 text message is actually text a message from other dates, for different issues.

In any event, the burden of proof rests on the person making the application. In this case, the Tenant should have provided a copy of the text message if he wanted to rely on that text message as proof that it should also count as a valid 2-Month Notice to End Tenancy for Landlord's Use. Without a copy of the text message, I am not satisfied that the Notice is valid and meets the form and content requirements under section 52 of the Act.

I note the Tenant pointed to section 10(2) of the Act to show that deviations from the approved forms do not invalidate the form used. Section 10(2) is as follows:

Director may approve forms

10 (2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

At this point, without any documentary evidence substantiating what this text message from the Landlord to the Tenant said, and what it contained, in full, I am unable to determine whether or not the deviations (using a text message rather than a proper form) had an affect on its substance.

I turn to the following portion of the Act:

Landlord's notice: landlord's use of property

49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Next, I turn to the following portion of the Act:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

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.

I have reviewed the evidence before me, and I find there is insufficient evidence that the Text message on January 27, 2020, meets the form and content requirements for a Notice. I note that when a Notice is given by the Landlord, it must be in the approved form, which is the standard 2-Month Notice to End Tenancy for Landlord's Use, it must also be signed, dated, and state the specific grounds for ending the tenancy. As already stated, I find there is insufficient evidence that a valid Notice was issued, which is a prerequisite for compensation to be due under section 51(1) of the Act. I find the Tenant has failed to demonstrate he is entitled to compensation.

I dismiss the Tenants' application, in full.

As the Tenant was unsuccessful with his application, I decline to grant the recovery of the filing fee.

Conclusion

The Tenant's application is dismissed, in full, 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: November 24, 2020

Residential Tenancy Branch