



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 for Dispute Resolution (the "Application") that was filed on August 9, 2020 under the *Residential Tenancy Act* (the "Act"), for a Monetary Order for money owed or compensation for loss under the Act, regulation, or tenancy agreement and recovery of the filing fee.

The Tenant and the Landlord S.H. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given an 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.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order for money owed or compensation for loss under the Act, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2011. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,000.00 to the Landlords on the first day of each month. The Tenant paid a security

deposit in the amount of \$425.00 which the Landlords continues to hold. The Tenancy ended on April 30, 2020.

The parties agreed that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of the Property dated February 29, 2020 (the "Two Month Notice") with an effective vacancy date of June 15, 2020. The parties agreed that the intent behind the Landlords serving the Two Month Notice was for the Tenant to vacate the rental unit on or before the effective date of the Notice, to allow for the Landlords' son to move into the rental unit.

The parties agreed that the Tenant complied with the Two Month Notice and provided her notice to end tenancy via email which was received by the Landlord on March 31, 2020. The Tenant indicated that she would vacate the rental unit early on April 30, 2020. The Landlord confirmed receipt of the Tenant notice to end tenancy.

The parties agreed that the Tenant did not pay rent for April 2020 as the Tenant was entitled to compensation equivalent to one-month free rent in accordance with the Two Month Notice. The Tenant is claiming for a further month of compensation, as she was under the impression that she was entitled to two months of compensation.

The Tenant is also claiming for compensation equivalent to 12 months of rent as the Landlords did not follow through on the intended purpose of the Two Month Notice. The Tenant provided an advertisement for the rental unit from August 2020 in which the Landlords had re listed the rental unit for rent at \$1,700.00 a month. The Tenant stated that she moved out of the rental unit to allow for the Landlords' son to move in, however, this did not take place. The Tenant provided a copy of the rental advertisement in support.

The Landlord responded by stating that it was the Landlords' intent to have their son and fiancée stay in the rental unit once they arrived into the Country for their wedding which has been scheduled for July 18 and 19, 2020. The Landlord stated that their son has a large dog and that the Landlords did not want to host their son in their portion of the home. The Landlord stated during the hearing that their son would stay in the rental unit for at least two months but could be longer. The Tenant provided an audio recording of the conversation between the Landlords and the Tenant at the time of the Two Month Notice being served to the Tenant which supports the Landlord's intent of ending the tenancy to allow their son to reside in the rental unit for at least two months.

The Landlords provided confirmation of the wedding and venue plans. The Landlord stated that due to the extenuating circumstance of the Covid-19 pandemic, the wedding guests were unable to travel across the boarder to attend the wedding. As such, the Landlords decided to postpone the wedding until July 2021. The Landlords provided confirmation of such postponement. The Landlord stated that due to the fact that the wedding was postponed due to the Covid-19 pandemic, their son did not make use of the rental unit as intended. The Landlords were unable to afford to keep the rental unit vacant, therefore, decided to re-rent the rental unit in August 2020.

The Tenant is also claiming for storage costs in the combined amount of \$427.78 in relation to having to move out of the rental unit and store some of her belongings. The Tenant was also required to spend a night in a hotel at a cost of \$222.07.

The Tenant is claiming for the return of her security deposit in the amount of \$425.00. During the hearing, the parties agreed that the Tenant has not yet provided the Landlord with her forwarding address in writing. If successful, the Tenant is seeking the return of the filing fee.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenant is claiming for an additional month of rent for compensation. Section 50 of the *Act* states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] 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*].

Section 51(1) of the Act states;

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**. If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

In this case, the parties agreed that near the end of the tenancy, rent in the amount of \$1,000.00 was due to the Landlords on the first day of each month. I accept that the Landlords served the Tenant in person with a Two Month Notice dated February 29, 2020 with an effective vacancy date of June 15, 2020.

I accept that the Tenant provided the Landlords with her Notice to end tenancy on March 31, 2020 with an effective vacancy date of April 30, 2020. I accept that the Tenant did not pay rent to the Landlords for April 2020. As such, I find that the Tenant was provided with the sufficient compensation pursuant to Section 51(1). I find that the Tenant is not entitled to further compensation in accordance with Section 51(1) and therefore dismiss the Tenant's claim for an additional month of compensation without leave to reapply.

The Tenant is claiming for compensation as a result of the Landlord not following through on the intended purpose of the Two Month Notice. According to Section 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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required

under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

According to the Residential Tenancy Policy Guideline 50;

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation.

In this case, the parties agreed that the Landlord's son did not occupy the rental unit which was the intent behind serving the Two Month Notice. I accept that the Landlords' son's wedding was postponed due to the Covid-19 pandemic, however, the Landlords provided insufficient evidence to demonstrate how the Covid-19 pandemic constituted an extenuating circumstance which prevented the Landlords' son from moving into the rental unit within a reasonable period of time, for at least 6 months. Based on the above, I find that the Tenant is entitled to **\$12,000.00** in compensation from the Landlord, pursuant to section 51(2) of the *Act*.

The Tenant is also claiming compensation for storage fees and a hotel stay in relation to having to move out of the rental unit. In this case, I find that the Tenant provided her notice to end tenancy early to the Landlord and moved out of the rental unit on April 30, 2020 in compliance with the Two Month Notice. I find that the Tenant is not entitled to

any further compensation beyond what is permitted under Section 51(2) of the Act. As such, I dismiss the Tenant's claims for storage costs and hotel stay without leave to reapply.

The Tenant is claiming for the return of her security deposit in the amount of \$425.00. Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

I accept that both parties agreed during the hearing that the Tenant has not yet provided the Landlords with her forwarding address in writing. As such, I find that the Tenant's Application for the return of her security deposit is premature and dismiss the claim with leave to reapply.

The Tenant is required to provide the Landlord with her forwarding address in writing. It is suggested that this be done by Canada Post registered mail. Section 39 of the *Act* establishes that it is the Tenant's obligation to provide a forwarding address for return of the Deposits within a year of the end of the tenancy. If that does not occur, the Landlords may keep the Deposit and the Tenants' right to the Deposit is extinguished.

During the hearing, the Landlord stated that she felt entitled to retaining the Tenant's security deposit for loss. The Landlord is required to repay the deposit or make a claim against it by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing. If the Landlord does neither, the Tenant is at liberty to reapply for double the amount of their security deposit.

As the Tenant was partially successful in her Application, I find that she is entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$12,100.00.

Conclusion

The Landlords have not taken steps to accomplish the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two

Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$12,100.00.

The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: December 2, 2020

Residential Tenancy Branch