



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On September 24, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord also attended the hearing, with G.D. attending as his agent. All parties in attendance provided a solemn affirmation.

The Tenant advised that he did not recall if he served the Landlord the Notice of Hearing package. When the Landlord was asked if he was served this package, he stated that he did not receive it. When he was questioned how he was aware of the hearing if he had not received this package, he then stated that he received it by mail. He was questioned why he had conflicting answers, and G.D. then stated that the Landlord has difficulty with English; however, up to that point, the Landlord had no difficulties understanding or responding. I find it important to note that this caused me to be skeptical of the reliability of the Landlord’s and of G.D.’s submissions.

Regardless, the Landlord confirmed that he received this package in October 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that he did not serve his evidence to the Landlord. As this evidence was not served on the Landlord pursuant to the requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

The Landlord advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; 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 monetary compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that he was not sure when the tenancy started, but it was four or five years ago. As well, the tenancy ended on August 31, 2020. He stated that rent was established at \$750.00 per month and that it was due on the first day of each month. He also stated that a security deposit of \$375.00 was paid. A written tenancy agreement was not created as the Landlord did not realize that he was required to have one in accordance with the *Act*.

The Tenant advised that the tenancy started on May 15, 2015 and the tenancy ended when he gave up vacant possession of the rental unit on August 29, 2020. He agreed that rent was \$750.00 per month, that it was due on the first day of each month, and that he had paid a security deposit in the amount of \$375.00.

He advised that he provided the Landlord's son with his forwarding address in writing in October or November 2020; however, the Landlord stated that he no longer lived at that address during that time. The Tenant then suggested he provided his forwarding address in writing sometime in September 2020.

All parties agreed that the Tenant never provided the Landlord with written consent for him to keep any or all of the security deposit. They also agreed that the Tenant only paid half of August 2020 rent. So, both parties agreed that the Landlord could keep the

Tenant's security deposit to satisfy these rental arrears for the remaining balance of August 2020 rent.

With respect to the Tenant's Application, all parties agreed that the Landlord served him with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on June 30, 2020 by hand. The reason the Landlord checked off on the Notice was because "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit." The effective end date of the tenancy was noted on the Notice as September 30, 2020.

As such, the Tenant is seeking compensation in the amount of **\$750.00** because he did not receive the one month's rent compensation that he is entitled to after being served the Notice, pursuant to Section 51(1) of the *Act*.

The Landlord advised that he did not compensate the Tenant in the amount of one month's rent because it was his belief that he was not required to as he gave the Tenant an extra month's notice to vacate. He stated that the Tenant never gave any written notice to end the tenancy early, and the Tenant confirmed this.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Regarding the Tenant's claim for one month's compensation owed to him because he was served the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

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.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Furthermore, Section 50 of the *Act* outlines the Tenant's responsibilities if he wanted to end the tenancy early after being served this 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].

When reviewing the totality of the submissions before me, the undisputed evidence is that the Tenant was served this Notice and was therefore entitled to one month's compensation. Furthermore, the undisputed evidence is that the Tenant never provided the Landlord with his 10 days' written notice to end the tenancy early. As such, I am satisfied that the Tenant is entitled to one month's rent compensation pursuant to Section 51 of the *Act*, less the pro-rated amount of ten days' rent because he did not give the proper notice to end the tenancy early. Therefore, I grant the Tenant a monetary award in the amount of **\$493.15**. This is calculated as $\$750.00 \times 12 \text{ months} / 365 \text{ days} \times 20 \text{ days}$.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$593.15** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: January 19, 2021

Residential Tenancy Branch