



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only one who had called into this teleconference.

The tenant testified that the landlord sent a copy of the dispute resolution hearing package ('Application') and evidence by way of registered mail on December 18, 2020 to the address where the landlord resides. The tenant testified that the landlord did not pick up the package, and it was returned. The tenant testified that this was the correct address for the landlord. The tenant provided the tracking information in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord deemed served with the Application and evidence on December 23, 2020, five days after mailing. Although the landlord had uploaded evidence for this hearing, the tenant testified that the landlord had never served her with any evidentiary materials in accordance with the *Act*. Accordingly, the landlord's evidence will be excluded for this hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on November 1, 2017, and ended on November 15, 2020 after the tenant was served with a 2 Month Notice to End Tenancy dated September 27, 2020 to vacate the rental unit on December 1, 2020. Monthly rent was set at \$650.00, payable on the first of the month. The tenant testified that the landlord had never collected a security deposit for the tenancy.

The tenant exercised her right to move out earlier than the effective date on the 2 Month Notice by giving notice to the landlord on November 3, 2020 that she would move out on November 15, 2020. The tenant moved out on November 15, 2020, but the landlord had only returned \$225.00 of the November 2020 rent to her instead of \$325.00. The tenant testified that she had never given permission to the landlord to withhold this amount, nor did the landlord obtain an Order allowing the landlord to do so from an Arbitrator. The tenant is requesting a monetary order for the remaining \$100.00.

Analysis

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.

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "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." Section 50(2) of the *Act* states that "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."

I find that this tenancy ended on the basis of the 2 Month Notice dated November 27, 2020. I find that the tenant complied with the 2 Month Notice, and moved out as a result of receiving that 2 Month Notice. I find that the tenant exercised their right under section

50(1) of the *Act* by giving at the landlord at least 10 day's written notice to end the tenancy on November 15, 2020. I find that the landlord failed to comply with section 50(2) of the *Act* by only refunding a portion of the rent owed to the tenant for the remaining period. I do not find that the landlord had the right to retain this amount. Accordingly, I allow the tenant's application for a monetary order in the amount of \$100.00.

Conclusion

I issue a Monetary Orders in the tenant's favour in the amount of \$100.00 for money owed to the tenant under section 50(2) of the *Act*.

The tenant is provided with this Order, and the landlord must be served with a copy of 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: April 28, 2021

Residential Tenancy Branch