



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the tenant's submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenant with her submitted documentary evidence via Canada Post Registered Mail on January 21, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset, counsel for the landlord argued that the tenant's application should be dismissed without leave to reapply as the tenancy ended as a result of a 1 month notice to end tenancy for cause and not for a notice to end tenancy under section 49 of the

Act. Both parties confirmed that on July 31, 2020 a mutual agreement to end tenancy was made to end the tenancy on August 31, 2020 as per the scheduled dispute resolution hearing (file number noted on the cover of this decision) and the landlord was granted an order of possession for August 31, 2020. The landlord stated that the tenancy ended on August 31, 2020 after the tenant was served with an order of possession and as such the tenant is not entitled to seek compensation under section 51 of the Act.

The tenant argued that he was told by the Arbitrator in the July 31, 2020 hearing that she “would not entertain another dispute hearing” that was scheduled for August 27, 2020 (Residential Tenancy Branch File No. noted on the cover of this decision). A review of that file shows that the tenant filed an application for dispute on July 31, 2020 scheduled for August 27, 2020 to dispute a 2 month notice issued for landlord’s use of property. The status on that file shows it was “withdrawn” by the tenant on August 20, 2020.

Section 51 (1) and (2) of the Act states in part, a tenant who receives a notice to end tenancy under section 49 [landlord’s use of property] is entitled to receive compensation from the landlord that is the equivalent of one months rent payable under the tenancy agreement and in addition to the amount under subsection (1), an amount that is equal to 12 times the monthly rent payable under the tenancy agreement if, steps have not been taken within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months’ duration.

In this case I find that the tenancy ended based upon the 1 month notice to end tenancy issue for cause that was settled on July 31, 2021. A mutual agreement to end the tenancy on August 31, 2020 was the result. That decision makes no note of the 2 month notice referred to by the tenant. In fact, the tenant applied on July 31, 2021 to dispute the 2 month notice which was scheduled for August 27, 2020. That application was withdrawn by the tenant on August 20, 2020 based on the Residential Tenancy Branch File. On this basis, the tenant’s application for compensation under section 51 is dismissed without leave to reapply. The tenancy ended as a result of a mutual agreement to end tenancy based upon a 1 month notice and not in relation to the 2 months under section 49 of the Act.

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: May 25, 2021

Residential Tenancy Branch