



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application for compensation equivalent to the last month's rent because the landlord ended the tenancy with a Two Month Notice to End Tenancy for Landlord's Use of Property and the tenant vacated the rental unit before the effective date.

The hearing commenced on January 26, 2021 and both parties appeared for the scheduled hearing. The hearing was adjourned and an Interim Decision was issued on that date and should be read in conjunction with this decision.

When the hearing reconvened both parties appeared and confirmed they received the Interim Decision of January 26, 2021. Both parties were affirmed and ordered to not make an unofficial recording of the proceeding. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

Issue(s) to be Decided

Is the tenant entitled to compensation the equivalent of one month's rent, as requested?

Background and Evidence

The tenancy started on June 1, 2017 and the rent was set at \$1200.00 payable on the first day of every month.

A Notice of Rent Increase was served to the tenant to increase the rent to \$1248.00; however, the parties provided conflicting testimony as when the rent increase was to take effect.

The tenant testified that she had the Notice of Rent Increase in front of her and I ordered her to read from it, including the date it was signed by the landlord and the stated effective date. The tenant testified that the Notice of Rent Increase was signed by the landlord on May 9, 2018 and set to take effect on September 1, 2018.

The landlord testified that she believed the rent increase was set to take effect after the tenancy ended. I asked the landlord what the effective date reads on her copy of the Notice of Rent Increase and she responded that she did not have her copy of the Notice of Rent Increase before her.

On September 22, 2018 the landlord served the tenant with a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") with a stated effective date of November 30, 2018. The tenant did not file to dispute the 2 Month Notice and she accepted that the tenancy would end pursuant to receiving a 2 Month Notice. The tenant in turn delivered to the landlord a written notice on September 30, 2018 to end the tenancy 10 days later, on October 10, 2018. The tenant vacated the rental unit by October 10, 2018 and the security deposit was refunded to the tenant.

The tenant submitted that she paid the landlord pro-rated rent for the 10 days in October 2018 that she occupied the rental unit. The landlord responded that, to the best of her recollection, the tenant did not pay any rent for October 2018. I asked the tenant to point to evidence she had to demonstrate she paid pro-rated rent for October 2018. The tenant stated she believed she had a receipt somewhere in her file folder but that her file was not before her. The tenant acknowledged that she did not upload a copy of a receipt for proof of payment for October 2018 in her evidence package. The tenant also stated she may have a cancelled cheque but that she did not obtain a copy of the cancelled cheque from her banking records. The landlord stated the tenant did ordinarily pay rent by cheque but that she did not do any research into her banking records from October 2018 either.

The tenant testified that she would have given the landlord the pro-rated rent when she delivered her letter of September 30, 2018 to end the tenancy in 10 days. I instructed the tenant to read from the letter and point out where it indicates she is paying pro-rated rent for October 2018. The tenant conceded the letter does not make any mention of paying rent or pro-rated rent for October 2018.

The landlord acknowledged that she did not provide the tenant any cheque or other form of payment as compensation for giving the tenant a 2 Month Notice. The landlord was of the belief that the tenant's lack of rent payment for the month of October 2018 was her compensation.

The tenant attempted to introduce evidence concerning a bug infestation and other problems with the rental unit in an effort to justify giving the landlord 10 days of notice to end the tenancy; however, I declined to hear such evidence as it is not relevant to the claim before me. A tenant in receipt of a 2 Month notice is permitted to end the tenancy with 10 days of written notice and a reason is not required.

The tenant also attempted to introduce evidence that she believes the landlord gave her the 2 Month Notice in retaliation for the tenant complaining about bugs and other issues. The landlord denied that to be true. I declined to hear such matters as it was irrelevant to the claim before me since the tenant accepted the 2 Month Notice and relied upon it in ending the tenancy, as evidenced by the letter she wrote on September 30, 2018, and in not disputing the 2 Month Notice. Had the tenant wished to continue the tenancy she would have been within her right to dispute the 2 Month Notice at that time and a hearing would have been held whereby the landlord's good faith intentions or ulterior motivations for ending the tenancy would have been explored.

Analysis

Based on the unopposed evidence before me, I accept that the landlord issued a *2 Month Notice to End Tenancy for Landlord's Use of Property* pursuant to section 49 of the Act on September 22, 2018; and; the tenant in turn gave the landlord 10 days of written notice to end the tenancy effective October 10, 2018 and the tenancy did in fact end on October 10, 2018.

Where a tenant receives a 2 Month Notice, the tenant is permitted to end the tenancy earlier than the stated effective date by giving the landlord 10 days of written notice and ending the tenancy early does not affect the tenant's right to compensation payable under section 51 of the Act. Nor, does a tenant have to justify or provide a reason for ending the tenancy with 10 days of notice. I have reproduced section 50 below:

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*].

[Reproduced as written with my emphasis underlined]

Section 50(1)(b) requires the tenant to pay pro-rated rent to the effective date of the tenant's notice; however, that obligation is met if the tenant withholds rent for the last month of tenancy, as provided in section 51(1.1) of the Act, as set out below. The parties were in dispute as to whether the tenant paid pro-rated rent to the landlord for October 1 - 10, 2018; however, if she did not pay pro-rated rent, the tenant is still entitled to the compensation equivalent to one month's rent under section 51 pursuant to the deeming provision of section 51(1.1).

Section 51(1) of the Act provides that a tenant in receipt of a 2 Month Notice is entitled to compensation equivalent to one month's rent. The compensation may be received by way of a refund from the landlord or by the tenant occupying the rental without paying rent their last month of tenancy, or a combination of both. Section 51(1) and (1.1) provides 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.

[Reproduced as written with my emphasis underlined]

There is no exemption from the requirement to pay the tenant compensation under section 51(1). The tenant occupied the rental unit until October 10, 2018 and legally brought the tenancy to an end on that date; yet, the landlord has not compensated the tenant the equivalent of one month's rent.

If the tenant did not pay the landlord pro-rated rent for October 1 -10, 2018, as submitted to me by the landlord, then the tenant has obtained the benefit of only 10 days of occupancy without paying rent and remained entitled to be paid 21 days of pro-rated rent by the landlord (based on 31 days in October 2018).

While the tenant believes she paid pro-rated rent, the tenant has the burden to prove she did and I find she did not sufficiently prove that. Therefore, I make my award based on the tenant receiving 10 days of free occupancy and the tenant's remaining entitlement to be paid the equivalent of 21 days of rent.

As for the amount of the monthly rent, I find the tenant reading from the Notice of Rent Increase to be more persuasive than the landlord's recollection and I am satisfied the rent was increased to \$1248.00 starting September 1, 2018. Therefore, the tenant's award is calculated base don the monthly rent of \$1248.00.

In keeping with all of the above, I provide the tenant with a Monetary Order to serve and enforce upon the landlord, as calculated below:

Monthly rent: \$1248.00

of days after the effective date remaining in month of October 2018: 21

of days in month of October 2018: 31

Compensation still payable to tenant = $\$1248.00 \times 21/31 = \845.42

Conclusion

The tenant is provided a Monetary Order in the amount of \$845.42 to serve and enforce upon the landlord.

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: June 2, 2021

Residential Tenancy Branch