



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 11, 2021 (the “Application”). The Tenant applied for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant sought \$548.38 in compensation pursuant to section 51(1) of the *Residential Tenancy Act* (the “*Act*”).

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started in December of 2018. Rent was due on the first day of each month. The parties agreed rent at the end of the tenancy was \$1,700.00. The parties agreed the Tenant moved out of the rental unit December 21, 2020.

The Tenant made the following submissions. They were served with the Two Month Notice in evidence. They did not pay December rent. They provided notice ending the tenancy early on December 06, 2020 for December 21, 2020 pursuant to the *Act*. They should be reimbursed pursuant to section 51 of the *Act* for the 10 days of December that they did not live in the rental unit.

The Two Month Notice was submitted. The Two Month Notice was issued October 27, 2020 with an effective date of January 01, 2021.

The Landlord did not dispute the submissions of the Tenant. The Landlord took issue with how the Tenant served the notice ending the tenancy early on December 06, 2020 because the Tenant sent it by email. The Landlord acknowledged receiving and understanding the notice. The Landlord acknowledged that arrangements were made for the Tenant to move out of the rental unit on December 21, 2020. The Landlord testified that they told the Tenant the notice was not sufficient in a text message and referred to a text message submitted by the Tenant.

In reply, the Tenant denied that the Landlord told the Tenant the notice was not sufficient.

Analysis

There is no issue that the Tenant was served with the Two Month Notice in evidence. The Two Month Notice was issued pursuant to section 49 of the *Act*.

Sections 50 and 51 of the *Act* state:

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].

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.

(1.2) 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...

I accept that the Tenant sent the Landlord notice ending the tenancy on December 06, 2020 for December 21, 2020 as the parties agreed on this. I am satisfied the Landlord received the notice, understood the notice and acted on the notice given the testimony of the parties.

I do not accept that the Landlord told the Tenant the notice was not sufficient as the text message relied on by the Landlord does not state this. The text message relied on by the Landlord includes vague comments about the Tenant making the request for compensation according to tenancy regulations and stating that the request is not valid under the act or regulations. The text message does not state that the method of service used for the Tenant's notice was insufficient. I also note that the text messages

were sent January 01, 2021, well after the Landlord received the Tenant's notice and after the Tenant had vacated the rental unit.

The purpose of service requirements is to ensure the other party receives and is aware of relevant documents and information. The Landlord did receive the Tenant's notice, was aware of the purpose of the notice and acted on the notice. The Landlord did not tell the Tenant that the method of service used was not acceptable to the Landlord. I find pursuant to section 71(2)(b) of the *Act* that the Landlord was sufficiently served with the Tenant's notice.

Further, I do not find it reasonable for the Landlord to have received the notice, understood the notice, acted on the notice and to now argue that section 51(1) of the *Act* should not apply because they received the notice by email versus another method. The purpose of section 51(1) of the *Act* is to compensate tenants whose tenancies end pursuant to a notice to end tenancy issued pursuant to section 49 of the *Act*. The Tenant's tenancy did end pursuant to a notice to end tenancy issued pursuant to section 49 of the *Act*. The Tenant should not be barred from receiving the appropriate compensation on the sole basis that the Tenant's notice was sent to the Landlord by email rather than another method when the Landlord received, understood and acted on the notice.

Given the above, I find the Tenant was served with the Two Month Notice pursuant to section 49 of the *Act*. I find the Tenant ended the tenancy early, on December 21, 2020, as they were entitled to do pursuant to section 50(1) of the *Act*. I find the Landlord was sufficiently served with the Tenant's notice pursuant to section 71(2)(b) of the *Act*. I find the tenancy ended December 21, 2020 when the Tenant moved out of the rental unit. I find the Tenant was entitled to the equivalent of one month's rent payable under the tenancy agreement pursuant to section 51(1) of the *Act*. I find the Tenant's notice did not change this entitlement as stated in section 50(3) of the *Act*. I accept the Tenant's argument that they did not receive the equivalent of one month's rent payable under the tenancy agreement because they only received free rent from December 01, 2020 to December 21, 2020. The Tenant was entitled to end the tenancy early and therefore was not required to pay rent after December 21, 2020. I accept the argument that the Tenant is entitled to compensation for December 22, 2020 to December 31, 2020 and award the Tenant \$548.38.

As the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$648.38 and is issued a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenant is entitled to \$648.38. I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: July 05, 2021

Residential Tenancy Branch