



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for money owed or compensation for damage or loss and the recovery of the filing fee for this application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – *Landlord’s Conduct/Cautioned*

At the outset of this proceedings, both the parties to this dispute were advised of the expected appropriate conduct during these proceedings.

During the hearing, the Landlord had to be cautioned several times regarding personal conduct towards this Arbitrator. The Landlord was advised of the expected appropriate

conduct during these proceedings, no less than three times, and cautioned that further outbursts could result in their removal of these proceedings.

The Landlord was also cautioned regarding their repeated interruption of their witness's testimony and leading their witnesses during these proceedings; the Landlord was provided with two warnings to stop interrupting and leading the witness testimony.

Additionally, when this Arbitrator attempted to question the Landlord's testimony and evidence, the Landlord became aggressive, interrupting this Arbitrator's questions and speaking loudly over the top of this Arbitrator. When the Landlord continued to interrupt these proceedings, the Landlord was cautioned that their phone line would be muted if further disruption to the proceedings continued. The Landlord continued to disrupt these proceedings, and the Landlord's phoneline was muted for three minutes, and then the Landlord was invited back to these proceedings.

At the end of these proceedings, this Arbitrator provided both parties with the available next steps, including Review Consideration, Judicial Review, and the Residential Tenancy Branch Contact information.

Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Is the Tenant entitled to the recovery of their filing fee for these proceedings?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here

The parties agreed that the tenancy began on December 1, 2019, as a month-to-month tenancy, that rent in the amount of \$2,550.00 was to be paid by the first day of each month, and at the outset of the tenancy, the Tenant had paid a \$1,275.00 security deposit to the Landlord. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

All parties agreed that the Landlord served the Tenant a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") on February 28, 2021. The Notice indicated that the Tenant was required to vacate the rental unit as of April 30, 2021.

Both parties agreed that the Tenant issued the Landlord 10-days written notice on April 6, 2021, advising the Landlord that they would be moving out early as of April 16, 2021.

The Landlord and Tenant agreed that the Tenant used the one-month compensation due to them as their rent for April 2021. The Tenant is requesting compensation for the 14-days that they did not reside in the rental unit, between April 17 to April 30, 2020, in the amount of \$1,190.00.

The Landlords testified that the compensation the Tenant is requesting had already been paid to the Tenant through a cheque for \$1,444.21, dated April 16, 2021. The Landlord testified that the cheque included \$1,190.00 in compensation due to the Tenant for the Landlord's notice to end the tenancy and \$254.29 in utility bills. The Landlord testified that the utility bills were in the Tenant's name but that they paid a portion of the bill each month. The Landlord submitted a copy of the cheque into documentary evidence.

The Tenant testified that the cheque the Landlord gave them was for the recovery of the security deposit and utility bills, consisting of \$1,275.00 in the security deposit and \$169.21 in a utility bill.

The Landlord testified that the cheque for \$1,444.21 was for everything due for the tenancy, the compensation for the Notice, the security deposit, and the utilities.

The Landlord was asked to provide a breakdown of the \$1,444.21 cheque paid to the Tenant, detailing the amounts for the compensation for the Notice, the security deposit, and the utilities. The Landlord became upset at this Arbitrator and refused to provide the requested breakdown of this check, that included the compensation for the Notice, the security deposit, and the utilities.

When this Arbitrator asked the Landlord to explain their math as to how this cheque contained the compensation for the Notice, the security deposit, and the utilities, the Landlord again changed their testimony, stating that they were still holding the security

deposit for this Tenancy. The Landlord confirmed, when asked, that they did not have written consent to keep the security deposit, nor had they filed to make a claim against the deposit for this tenancy.

The Landlord testified that the Arbitrator's request was not relevant as the Tenant had signed a letter stating that the \$1,444.21 cheque represented all monies due for this tenancy and that by signing this letter, the Tenant had forfeited their right to bring this claim against the Landlord. The Landlord submitted a copy of a letter into documentary evidence.

The Tenant agreed that they signed this letter but that the letter was a resolution of the security deposit and utilities due to them at the end of this tenancy. The Tenant testified that the compensation due to them under the law for the Landlord's notice was not part of this negotiation as it's the law and can not be negated.

The Landlord called a witness, stating that this witness was present during their negotiations with the Tenant. The witness testified that they were present when the letter was signed and testified that the Landlord and Tenant had negotiated the security deposit and utility bills during this negotiation. When the Landlord asked, "you saw me negotiate the rent," the witness amended their testimony stating they witnessed the Landlord negotiated the security deposit, the utilities, and the rent with the Tenant.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties supported by the documentary evidence that the Landlord did serve the Tenant was a two-month notice to end tenancy for the Landlord's use of the property pursuant to section 49 of the *Act*, on February 28, 2021.

Tenant's compensation: section 49 notice

51 (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] or the tenant receives a director's order ending a

periodic tenancy under section 49.2 [director's orders: renovations or repairs], 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 or director's order, 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].

I also accept the agreed-upon testimony of these parties that the Tenant exercised their rights pursuant to section 51(1a) of the Act, notifying the Landlord that they would be ending their tenancy earlier than the date indicated on the notice by providing the Landlord with a 10-day written notice issued on April 6, 2021, ending their tenancy as of April 16, 2021.

The parties also agreed that they meet at the end of the tenancy to address the amounts due, including the security deposit and utility bills. However, the parties offered conflicting verbal testimony regarding the inclusion of the compensation due to the Tenant pursuant to section 51 of the *Act* during this meeting.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, it is normally the party making a claim that has the burden to provide sufficient evidence over and above their testimony to establish their claim. However, as the compensation due to the Tenant pursuant to section 51 of the *Act* is a legislated amount that the Landlord must pay, I find that it is the Landlord who holds the burden to prove that the required compensation has been paid to the Tenant in accordance with the *Act*.

During these proceedings, the Landlord offered conflicting testimony regarding the \$1,444.21 cheque they gave to the Tenant. First, the Landlord testified that the cheque included \$1,190.00 in compensation under section 51 of the *Act* for the period between

April 17 to 31, 2021 and \$254.21 in a gas and electricity bill. The Landlord then amended their testimony, stating that the cheque also included the return of the security deposit. The Landlord was asked several times to explain their math for this cheque if it contained the compensation, the security deposit, and the utility bills; when the Landlord was unable to explain the value of this cheque, they then changed their testimony again; stating that they were still holding the security deposit for this tenancy.

I must comment on the testimony provided by the Landlord during these proceedings; overall, I find that the Landlord offered inconsistent and contradictory testimony, which caused me to doubt their credibility. Specifically, the Landlord's claim that they had already paid the compensation due to the Tenant pursuant to section 51 of the *Act*; however, the cheque they provided as evidence to show that the required amount had been paid, clearly states on the memo line of this cheque "Damage Deposit + Fortis return 1314 Ewen Ave." Overall, I find that there is no evidence before me to show that the compensation had been paid to the Tenant as required by section 51 of the *Act*.

Additionally, I will also address the Landlord's argument that the letter the Tenant signed at the end of tenancy meant that this Tenant had forfeited their right to claim for the compensation due to them. The letter and the cheque presented into evidence by the Landlord clearly record that the cheque and the agreement between these parties covered the security deposit and utility bills for this tenancy. However, neither of these documents mention anything about the compensation due under section 51 of the *Act*.

Therefore, as neither of these documents mentions the inclusion of the legislated compensation in the calculations of the settlement agreement and the parties to this dispute offered conflicting testimony as to what was included in this settlement, I must defer to the rule of *Contra Proferentem*.

Contra Proferentem is a rule used in the legal system when interpreting a contract, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause.

Therefore, as the compensation due under section 51 of the *Act* was not clearly included in this document, and it was the Landlord who drafted this document, I find that pursuant to the rule of *contra proferentem*, the ambiguity in this document must be resolved against the Landlord who drafted this letter. Consequently, I find that this document does not include the compensation due to this Tenant under section 51 of the *Act*.

As for the Landlord's witness, overall, I find that the witness testimony provided during these proceedings to be unreliable due to the Landlord's actions of lead and coached this witness during these proceedings.

Additionally, even if this document had included a clause stating that this agreement included the compensation due to the Tenant pursuant to section 51 of the *Act*, I find that the Landlord would still need to prove that the compensation had been paid in full as this compensation is legislated and pursuant to section 5 of the *Act*, parties cannot contract out of their legislated requirements; section 5 of the *Act* states the following:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Therefore, as the Landlord has not proven that they have paid the full compensation due to this Tenant pursuant to section 51 of the *Act*, and these parties are not permitted to contract out of the Landlord's requirement to pay this compensation, I find that the Landlord must pay the remaining compensation due to the Tenant.

Consequently, I find that the Tenant has provided sufficient and compelling evidence to persuade me that they have not been paid the full compensation due to them pursuant to section 51 of the *Act*. Accordingly, I grant the Tenant a monetary award of **\$1,150.68**, consisting of the recovery of 14 days' rent at the per diem rate of \$82.19 per day.

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| Monthly Rent | 2,500.00 |
| Yearly Rent | 30,000.00 |
| Per Diem | 82.19 |
| Days Refunded | 14 |
| Awarded to TT | 1,150.68 |

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a filing fee for an application for dispute resolution. As the Tenant has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Overall, I grant the Tenant a monetary order of \$1,250.68, consisting of \$1,150.68 in compensation due to the Tenant pursuant to section 51 of the *Act* and \$100.00 in the recovery of the filing fee for this hearing.

Conclusion

I grant the Tenant a Monetary Order in the amount of \$1,250.68. The Tenant is provided with this Order 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: September 10, 2021

Residential Tenancy Branch