



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT FFT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for July 19, 2021. The hearing was adjourned to ensure that both parties were properly served with each other's evidentiary materials, and had time to review these materials before the hearing, and properly respond at the hearing.

This reconvened 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; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*. As confirmed at the first hearing, the tenant confirmed that they wished to rely on only the copy of the 2 Month Notice, and the other evidentiary materials will be excluded for the purposes of the hearing.

Issues(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on March 1, 2020, and ended on February 28, 2021. Monthly rent was set at \$1,500.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$750.00 for this tenancy.

The tenant filed this application as the tenant was served with a 2 Month Notice to End Tenancy on December 22, 2020 for an effective date of February 28, 2021 stating the following reason:

“All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.”

The tenant testified that they had moved out in accordance with the 2 Month Notice, and the landlord had never provided the tenant with 1 Month's rent as compensation as required.

The landlords do not dispute that the home was sold, but dispute the tenant's claim for compensation as they feel that the tenant had already given notice to end tenancy prior to the service of the 2 Month Notice. The landlords testified that the service of the 2 Month Notice was merely a formality at the request of the realtor to ensure that the tenant moves out.

The landlords submitted a copy of an email sent by the tenant on November 23, 2020, which the landlords feel expressed the tenant's intention to move out at the end of the fixed term on February 28, 2021. The landlords testified that they made the subsequent decision to sell the condo as a result of that email.

The following is an excerpt from the tenant's email:

"if you and O wanted to move back into your apartment for Dec. 1st or 15th, I could make that happen. I understand that the world is a bit weird at this time so I figured I would give you that option just in case you needed it.

My parents have offered in case I need to move back home, they are welcoming me back anytime. Don't get me wrong I am able to stay here until the end of our term at the end of Feb 2021, however, I wanted to give you the option after hearing that you are moving back from downtown. Let me know".

The landlords responded the next day on November 24, 2020 with the following:

"Thanks for the offer but we're actually going to be heading off to Mexico for a few months in January. We're not staying in ridge for long.

If you don't mind staying the full term of your agreement that would be great. But if you need to move out before March 1st of 2021 that's totally fine! Just let me know and I will make arrangements on my end".

The landlords provided another email dated January 26, 2021 which states that the tenant had decided to pay the last month's rent after speaking with an advisor, and that they would be moving out on February 28, 2021.

The tenant testified that they did not give formal notice to end the tenancy until after they had received the 2 Month Notice to End Tenancy for Landlord's Use. The tenant testified that the initial email on November 23, 2020 was to discuss the how the tenancy would proceed as the end of the fixed term was approaching, and a proposal does not constitute proper notice. The tenant testified that regardless, the landlords had served the tenant with a 2 Month Notice, and the Act is specific about the requirements for compensation related to the Notice.

Analysis

RTB Policy Guideline #50 addresses a landlord's obligations to compensate the tenant after a 2 Month Notice is served:

B. COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

Section 51(1) of the RTA requires a landlord who gives a notice to end a tenancy for landlord's use under section 49 to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a valid notice to end tenancy for landlord's use 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

Section 51.4(1) of the RTA entitles a tenant who receives an order to end tenancy for renovations or repairs to receive from the landlord, on or before the effective date of the director's order, an amount that is the equivalent of one month's rent payable under the tenancy agreement.

A tenant who is entitled to receive one month's rent under these sections may instead withhold that amount from the last month's rent. If the tenant ends the tenancy earlier in these circumstances, as permitted by section 50 of the RTA, and before withholding the last month's rent, the landlord must refund that amount.

I have considered the evidentiary materials as well as the sworn testimony of both parties in the hearing. I find that although the landlords' testimony is that the 2 Month Notice was merely a formality and given at the request of the realtor, the tenant was still served with a 2 Month Notice to End Tenancy. The Act and legislation is very specific about the compensation requirements, as set out above. In addition to the service of the 2 Month Notice, I must also consider the validity of the 2 Month Notice.

Although the landlords did list the home for sale immediately after a discussion with the tenant, I do not find that the tenant had provided formal notice to the landlords that they would be moving out. I find that evidence shows that the tenant had wanted to demonstrate flexibility in ending the tenancy around the end of the fixed-term, which the landlords did enjoy the benefits of. In this case, the home was sold, the 2 Month Notice to End Tenancy was served on December 22, 2020, and the tenant moved out by the effective date of the 2 Month Notice, which also coincided with the end of the fixed term.

I find the 2 Month Notice to be valid. Additionally, if the landlords had believed that that tenant had given sufficient and formal notice to end the tenancy, a 2 Month Notice would not have been required of the landlords. In this case, the landlords did elect to serve the tenant with a valid 2 Month Notice, triggering their obligation to compensate the tenant under the Act. As the tenant was not provided with this compensation, and as the tenant did pay the last month's rent, I find that the tenant is entitled to compensation equivalent to 1 Month's Rent in the amount of \$1,500.00.

As the tenant was successful with their application, I allow the tenant to recover the filing fee for this application.

Conclusion

I find that the tenant is entitled to compensation in the amount of \$1,500.00, plus \$100.00 for recovery of the filing fee. I issue a \$1,600.00 Monetary Order in the tenant's favour.

The landlords must be served with a copy of this Order as soon as possible. Should the landlords 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: November 30, 2021

Residential Tenancy Branch