



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skylark Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNECT 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 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 landlord 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 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application and evidence. The tenant testified that they were not served with the landlord's evidentiary materials, which was served to the tenant by way of registered mail. The tenant confirmed that they had previously seen the contents of the landlord's evidentiary materials, and did not take issue with the admittance of these materials, and wished to proceed. The hearing proceeded accordingly.

Issues(s) to be Decided

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

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

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 July 1, 2020, with monthly rent set at \$2,300.00, payable on the first of the month. A security deposit in the amount of \$1,150.00 was held for this tenancy, and was returned to the tenant after they had moved out. The tenant testified that they had moved out on June 15, 2021. The landlord testified that the tenant did not give proper notice to end this tenancy, and that this tenancy did not officially end until July 8, 2021 when the tenant returned the keys to the landlord's agent.

The tenant filed this application as the tenant was served with a 2 Month Notice to End Tenancy on May 24, 2021 for an effective date of August 1, 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 failed to provide the tenant with compensation equivalent to one month's rent as required. The tenant testified that an agreement was negotiated as the tenant was originally promised a long-term tenancy, but the landlord had sold the home instead. The tenant testified that the agreement included \$1,000.00 for moving costs, return of the security deposit, one month's compensation, as well as the return of a portion of the June 2021 rent. The tenant testified that they had vacated on June 15, 2021 after paying rent for the entire month, but the landlord did not return the remaining portion of the rent, nor was the tenant compensated in accordance with the Act for the 2 Month Notice. The tenant confirmed that they did receive a cheque of \$1,000.00 for the moving costs, as well as the return of their security deposit.

The landlord testified that the tenant never provided written notice that they were moving out earlier than the effective date, and the tenant would not return the keys until they received the \$1,000.00. The landlord testified that the tenancy did not end until July 2021, and if any money is owed to the tenant, the \$1,000.00 should be deducted from any money owing to the tenant.

Analysis

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "giving the landlord at least 10 day's written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice." If a tenant elects to exercise this option, the tenant is only responsible for paying to the landlord "the proportion of the rent due to the effective date of the tenant's notice" as per section 50(1)(b) of the *Act*.

I find that the tenant did not provide the landlord with at least 10 day's written notice to end the tenancy on a date that is earlier than the effective date of the 2 Month Notice. I find that the tenant moved out earlier than the effective date on the 2 Month Notice, without giving proper notice, and I therefore dismiss the tenant's application for the return of rent for the period of June 16, 2021 to June 30, 2021 without leave to reapply.

As the tenant failed to give at least 10 day's written notice to end the tenancy on a date that is earlier than the effective date of the 2 Month Notice, the tenant was obligated to continue with the tenancy until at least July 31, 2021, which the tenant did not.

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 find that the tenant did not pay any rent for July 2021, which satisfies the landlord's requirement to compensate the tenant pursuant to the legislation as set out above. Accordingly, the tenant's application for compensation equivalent to one month's rent is dismissed without leave to reapply.

During the hearing the landlord expressed frustration over the fact that the tenant had filed this application after the tenant had blackmailed the landlord into providing additional compensation that is not payable under the *Act*. I cannot make any determination as to what monetary awards the landlord is entitled to as no cross applications were filed by the landlord to be heard with the tenant's as part of this dispute. The landlord is at liberty to file their own application for losses or money owed under the *Act*. Liberty to apply is not an extension of any applicable timelines.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was unsuccessful with their application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: March 07, 2022

Residential Tenancy Branch