



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 as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), compensation of \$100.00 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property; and to recover the \$100.00 cost of their Application filing fee.

The Tenants appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenants, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenants.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about it. During the hearing the Tenants were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents by email, sent on September 22, 2021. The Tenants provided a proof of service in the form of a copy of the email they sent, as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents and the Tenants' evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenants in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenants that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Tenants confirmed that they were not recording it.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenants agreed that the fixed term tenancy began on October 1, 2017, and ran to October 1, 2018, and that it then operated on a month-to-month basis. The Tenants confirmed that by the end of the tenancy they paid the Landlord a monthly rent of \$1,640.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$800.00, and no pet damage deposit. The Tenants said that the Landlord returned \$675.00 of the security deposit, but retained the rest. This proceeding is not covering recovery of these funds. The Tenants vacated the rental unit on August 12, 2021.

The Tenant said in the hearing that the tenancy ended, because the Landlord gave them a Two Month Notice to End the Tenancy for Landlord's Use, and in this case the Landlord sold the residential property.

The Tenants indicated that they served the Landlord with a 10 Day Notice to End the Tenancy on August 2, 2021, pursuant to section 50 of the Act. The Tenants also gave the Landlord their forwarding address in writing, and requested the return of the security deposit in this Notice.

However, the claim before me addresses the reimbursement of overpaid rent by the

Tenants to the Landlord in the original amount of \$1,005.16, which the Tenant said was agreed upon by the Parties after consulting with the RTB.

The Tenants said that the Landlord, the Realtor and the RTB agreed with them that the Landlord owed the Tenants one month of rent, pursuant to section 51 of the Act, which states:

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.

The Tenants said that the Landlord paid them \$905.19, which is three cents short of \$100.00. They said that the Landlord sent them \$100.00 after they served the Notice of Hearing documents to her. However, this does not include recovery of the \$100.00 Application filing fee for which the Tenants have claimed.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I agree with the Tenants that the Landlord was required to provide them with recovery of the amount they had paid in rent for the last month of the tenancy, pursuant to section 51 of the Act. The undisputed evidence before me is that the Landlord owes the Tenants an amount that they agreed on, which is based on the Tenants' right to recover the last month's rental payment. The Tenants said that the Parties agreed on the amount of \$1,005.16 being owed to the Tenants by the Landlord.

The Tenants confirmed that the Landlord has paid this amount, less three cents that the Tenants are willing to absorb. However, the Landlord also owes them recovery of the **\$100.00 RTB Application filing fee** for this proceeding. If the Landlord had paid the Tenants the full amount they had agreed on, the Tenants would not have had to apply for dispute resolution to resolve the matter.

Based on the evidence before me overall, and pursuant to section 72 of the Act, I find that the Landlord owes the Tenants \$100.00 for the reimbursement of the Application filing fee that the Tenants had to pay. I, therefore, award the Tenants with a **Monetary Order** of **\$100.00** from the Landlord, pursuant to sections 72 and 67 of the Act.

I grant the Tenants a **Monetary Order** of **\$100.00** from the Landlord in this matter, pursuant to sections 62 and 72 of the Act.

Conclusion

The Tenants are successful in their Application for recovery of the \$100.00 Application filing fee from the Landlord, as they provided sufficient, undisputed evidence of their entitlement to recovery of the \$100.00 Application filing fee.

The Tenants are granted a **Monetary Order** of **\$100.00** from the Landlord. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 28, 2022

Residential Tenancy Branch