



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K MIRAN-KHAN INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on December 7, 2021 seeking compensation for unpaid rent, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 14, 2022.

Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. The Tenant confirmed they received the Notice of this hearing from the Landlord, and the Landlord’s prepared evidence. The Tenant did not prepare evidence in advance and relied on their testimony in the hearing.

Issue(s) to be Decided

Is the Landlord eligible for compensation for unpaid rent, pursuant to s. 67 of the *Act*?

Is the Landlord eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

As part of their evidence, the Landlord provided a copy of the tenancy agreement between the parties. The tenancy started on February 1, 2020 for an initial fixed term until January 31, 2021, then reverting to a month-to-month agreement after that. The

monthly rent was \$3,000 payable on the 1st of each month. The Tenant paid a security deposit of \$1,500.

The record shows that the Tenant made a request to the Landlord via text on November 9 for a move-out to their new accommodations on November 20. This is set out in an email from Landlord's agent (who did not attend the hearing) to the Tenant dated November 15, 2021.

In the hearing, the Tenant described having a discussion with the Landlord's agent even earlier, on October 7, with the Landlord's agent stating (paraphrased) 'if you need to go . . . a couple of weeks notice is okay. . . '

In the November 15 message the Landlord's agent stated to the Tenant that the Landlord accepted "[the Tenant's] text message of November 9 as your official written notice"; however, they requested "a written note with your signatures affixed". The Landlord stated their commitment to re-renting the unit to new tenants by December 15, then stating they would refund half of December's rent to the Tenant.

The Landlord in this message stated: "Our goal is to accommodate the short notice, and November 20th exit if we can."

On November 17, the Landlord (i.e., not their agent) messaged to the Tenant directly and again requested a written notice. They stressed to the Tenant that they were responsible for paying December's rent based on the late notice the Tenant gave of their intention to move out; that was less than 30 days as the *Act* requires and is set out in the tenancy agreement. The Landlord re-stated their commitment to have new renters move in and then agreed to give the Tenant half the rent amount for December if new tenants came in.

In the hearing, the Tenant gave their actual move-out date as November 30, then doing a walk-through inspection of the rental unit together with the Landlord on December 1. On December 6 they gave their forwarding address to the Landlord via email, and did so again in writing on December 14. The Landlord confirmed this information in the hearing.

In their Application, the Landlord stated they did not receive *written* notice from the Tenant, despite their two emailed requests to the Tenant as set out above. They claim the entire amount of December rent.

In the hearing, the Tenant requested the return of their security deposit. The Tenant acknowledged that they only made a short-term end-of-tenancy request because they had authorization from the Landlord's agent that doing so was acceptable.

Analysis

The *Act* s. 45(1) specifies that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable.

This section also specifies that a notice given by a tenant must comply with the s. 52 stipulations of form and content. Those are: in writing, with signature and date, the address of the rental unit, and the effective date of the notice.

I find the parties had a fixed-term tenancy agreement in place from February 1, 2020 to January 31, 2021. I find the agreement became a month-to-month, or periodic, tenancy after that date. On this point, the agreement at paragraph 14(1) specifies that the Tenant may end the periodic tenancy by giving the Landlord at least one month's written notice. This is in line with s. 45 of the *Act*.

Here, I find the Tenant provided some message to the Landlord on November 9, intending to end the tenancy for November 20. This is not a legal notice to end the tenancy: as evidenced by the Landlord's subsequent requests, that notice was not in writing, and did not comply with the requirements of s. 45 in terms of the timeline.

However, I consider some mitigating factors, due to communication from the Landlord:

- I accept the Tenant's version of events that the Landlord's agent *had* advised that a couple of weeks' notice was acceptable.
- The Landlord's agent had stated they would try to make November 20 work for the Tenant.
- In the November 15 message, the Landlord provided that the November 9 notice was okay; however, the amount of the following month's rent was contingent on their finding a new tenant to rent.

I find there was mixed messaging from the Landlord on what they deemed acceptable coming from the Tenant in regard to notification. I find the Landlord accepted the

Tenant's notice to end the tenancy that was not in line with s. 45. Moreover, though the communication from the Landlord was that December's rent amount depended on whether they could find new tenants for mid-December, the Landlord made their Application for this hearing on December 7, claiming the full December rent amount. I find this contradicts their messaging to the Tenant in mid-November. While the Landlord seemed to rely on a written notice, the same legal consideration was not in place with respect to necessary timelines that are set out in the *Act*.

I understand the Landlord was trying to rectify this by mid-November and made it clear to the Tenant that the full amount of rent for December was still necessary. I still find they accepted the late notice from the Tenant; therefore, they are foregoing their legal entitlement to the full amount of December rent. That should *not* be contingent on whether they find new tenants by mid-month.

Though the Landlord's Application here specifically mentioned no signed notice from the Tenant, I make no finding on the basis that a *written* and *signed* notice to end the tenancy was not in place. Though the Landlord asked about this, I find this appeared to be a formality after the fact that they accepted the Tenant's November 9 notice – their message was explicit that the November 9 notice was acceptable.

Strictly speaking, the notice from the Tenant was not in line with the *Act* or the tenancy agreement; however, I find that the evidence of the messaging from the Landlord is equal in weight in its impact. The Tenant is obligated for some amount of December rent; therefore, I find that the one-half amount of monthly rent is suitable compensation to the Landlord in this situation. While this acknowledges that the Tenant's notice was legally not valid, this equitably does not unduly award the Landlord for the mixed messaging they provided.

I grant the Landlord an equivalent of one-half monthly rent, this is \$1,500. The Landlord applied against the security deposit within 15 days of the end of this tenancy, and by s. 38 they are allowed to do so.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1,500. After setting off the security deposit, there is no balance remaining. I am authorizing the landlord to keep the full security deposit amount.

I find the Landlord was only moderately successful in this Application; therefore, I make no award for reimbursement of the Application filing fee.

Conclusion

With the Landlord already withholding the security deposit amount of \$1,500, I make no separate award by Monetary Order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 14, 2022

Residential Tenancy Branch