



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 by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated May 31, 2021 (the "2 Month Notice") pursuant to sections 51.4 and 67; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

One of the two Landlords ("RB"), the Tenant and the Tenants advocate ("IC") attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Matter – Service of NDRP Package on Landlord

The Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence ("NDRP Package") on the Landlord by registered mail on November 26, 2021. The Tenant submitted into evidence a copy of the online tracking information from Canada Post that confirmed delivery of the NDRP Package on December 1, 2021. The Landlord stated he did not get the NDRP Package. However, he did not explain how he knew about this hearing and there was no record at the Residential Tenancy Branch ("RTB") that Landlord called the RTB and was provided with a courtesy copy of the NDRP. Subsection 88(1) of the Act states:

- 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) *if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
 - (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents];*
 - (f) by any other means of service provided for in the regulations.

[emphasis in italics added]

Subsection 89(1) of the Act allows the applicant to serve the NDRP on the respondent by registered mail. I have checked Canada Post online and found the tracking number provided by the Tenant was for registered mail that was received by Canada Post from the send on November 26, 2021 and delivered to the addressee on December 1, 2021. As such, I find the NDRP Package was served on the Landlord in accordance with section 89(1) of the Act.

The Landlord stated he did not serve any evidence on the Tenant for this hearing.

Issues to be Decided

Is the Tenant entitled to:

- monetary compensation from the Landlord?
- recover the filing fee for the Application from the Landlord?

Background and Evidence

While I have turned my mind to all 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 principal aspects of the Application and my findings are set out below.

There was no formal tenancy agreement for this tenancy. The Tenant submitted into evidence an Intent to Rent which stated the tenancy commenced on March 1, 2019 with rent of \$900.00. The Tenant was to pay a security deposit of \$450.00. The parties agreed the security deposit of \$450.00 was returned to the Tenant after the tenancy ended.

The Tenant submitted into evidence a signed copy of the 2 Month Notice and stated the effective date for move-out was on July 31, 2021. The Tenant submitted into evidence a string of emails starting June 24, 2022. On June 21, 2021, the Tenant gave the Landlord notice ("10 Day Notice") advising she would be vacating the rental unit. The Landlord responded back to the Tenant's email on June 24, 2024 in which he stated in part "I am not sure what your are disputing w/ the RTB as you have given me 10 days notice that you are moving at the end of the month.". The Tenant stated the rent was paid in full for June 2022, which testimony was not disputed by the RB.

Analysis

Section 50 and subsections 51(1) and 51(1.2) of the Act state:

- 50(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]*.

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.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) *If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.*

[emphasis in italics added]

The Tenant sent the 10 Day Notice to the Landlord by email on June 20, 2021. Although there was no evidence the Landlord had consented to notices being served on him by email, the Landlord responded to the email on June 20, 2021. As such, I find, pursuant to section 71(2)(b) of the Act, that the Landlord was sufficiently served with the 10 Day Notice on June 20, 2021. Pursuant to subsection 50(1)(a) of the Act, the effective date of the 10 Day Notice was July 1, 2022. The Tenant vacated the rental unit until July 1, 2021.

Pursuant to subsection 51(1.2), a landlord must pay the Tenant compensation for the equivalent to one month's rent. However, the Tenant did not vacate the rental unit on June 30, 2021 but instead vacated it on July 1, 2021. As such, the Tenant is entitled to compensation from the Landlord, calculated on a per diem basis, for the period July 2 to July 31, 2021. Based on the above, I find the Tenant has proven, on a balance of probabilities, she is entitled to \$870.67 compensation from the Landlord calculated as follows:

$$\frac{\text{Monthly Rent of } \$900.00}{31 \text{ days}} \times 30 \text{ days} = \$870.97$$

Pursuant to sections 51(1.2) of the Act, I Order the Landlord to pay the Tenant \$870.77.

As the Tenant has been successful in the Application, I order the Landlord to pay the Tenant \$100.00 for reimbursement of her filing fee for the Application pursuant to section 72 of the Act.

Conclusion

The Tenant is granted a Monetary Order for \$970.97 calculated as follows:

Item	Amount
Compensation for Money Owing to Tenant	\$870.97
Reimbursement of Filing Fee for Application	\$100.00
TOTAL	\$970.97

The Tenant is provided with this Order on 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 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: July 20, 2022

Residential Tenancy Branch