



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for compensation 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 sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials and had not served any materials of their own. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the background facts. This periodic tenancy began on October 1, 2019. Monthly rent was \$2,200.00 payable on the first of each month. The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated December 31, 2021 with an effective date of February 28, 2022. The reason provided on the notice for the tenancy to end is that all of the conditions for the sale of the rental unit have been completed and the purchaser requested the landlord issue the notice as they intend to occupy the unit.

The tenant testified that they did not give the landlord written notice to end the tenancy earlier than the effective date of the 2 Month Notice but mentioned it to them verbally and made reference to vacating in some text message conversations. The parties agree the tenant vacated the rental unit on January 31, 2022 and did not pay rent for February 2022. Copies of text message conversations between the parties was submitted into documentary evidence.

The tenant now seeks the equivalent of one month's rent pursuant to section 51(1). The tenant confirmed that they have no information on the what use is being made of the rental unit after the end of the tenancy and are not making an application pursuant to section 51(2).

Analysis

Section 50(1) of the Act provides that a tenant who has been issued a Notice to End Tenancy for Landlord's Use may end the tenancy earlier than the effective date of the notice by giving the landlord at least 10 days' written notice.

In the present case the undisputed evidence of the parties is that the tenant did not give written notice to the landlord at any time. While the tenant makes some reference to giving notice in their text message conversations, an ordinary reading of the communications shows no indication that the tenant is giving notice to end the tenancy.

I accept the undisputed evidence of the parties that the tenants did not give written notice to end the tenancy as provided in the *Act*. I therefore find that the tenant has not

met their requirement to give notice to end the tenancy earlier than the date specified on the 2 Month Notice. I find the tenant was obligated to pay rent for the month of February 2022 and they were permitted to withhold last month's rent pursuant to section 51(1.1) fulfilling their right to compensation.

I accept that at some point in February 2022 the landlord became aware that the tenant had vacated the rental unit. I accept the evidence of the parties that they performed a move-out inspection together on January 31, 2022 and find that the parties knew at that point the tenant's intention to end the tenancy earlier than the effective date of the 2 Month Notice. I find that from February 1, 2022 onwards the landlord had exclusive use of the rental property.

I find no earlier documentary evidence showing the tenant giving notice to the landlord to end the tenancy. I therefore find that the move-out inspection and return of keys on January 31, 2022 constitutes the first instance of notice by the tenant to end the tenancy.

Pursuant to section 51(1.1) I find the earlier effective date of such a notice would have been February 10, 2022. Accordingly, I find the tenant is entitled to recovery of the balance of the rent for that month from February 11, 2022 to February 28, 2022. I calculate that figure to be \$1,414.29 ($[\$2,200.00/28\text{days}] \times 18\text{days}$). I therefore issue a monetary award in that amount in the tenant's favour.

As the tenant was successful in their application they are also entitled to recover the filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,514.29. 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 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: September 20, 2022

Residential Tenancy Branch