



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD 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, or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application, 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.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. 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 was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

Preliminary Issue-Tenant's Forwarding Address

Although the tenant testified that they had sent their address by way of text message, the landlord testified in the hearing that they do not recall receiving the tenant's forwarding address. The landlord confirmed in the hearing that they are still in

possession of the \$1,200.00 security deposit, and that they have not filed any applications allowing them to keep the deposit.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

RTB Policy Guideline 17, paragraph 10 establishes the following:

The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.

In light of the disputed testimony, I am not satisfied that the landlord had received the tenant's forwarding address in writing. As both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing, as noted on the cover page of this decision. I indicated to both parties that today's date, October 17, 2022 serves as the date that the landlord was served with the tenant's forwarding address, and that that the security deposit must be dealt with in accordance with section 38 of the *Act*.

If the landlord fails to comply with section 38 of the *Act*, the tenant may reapply. Liberty to reapply is not an extension of any applicable limitation period.

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?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, 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 month-to-month tenancy began on October 1, 2019, and ended on January 17, 2022. Monthly rent was set at \$2,450.00, payable on the first of the month. The landlord still holds the security deposit of \$1,200.00.

Both parties confirmed that the tenant was served with a 2 Month Notice for Landlord's Use in November 2021 with an effective date of January 31, 2022 after the landlord sold the home. The tenant testified that they gave 10 day's notice as allowed under the *Act* to move out before the effective date as they had found new housing. The tenant testified that they had moved out on January 17, 2022, but the landlord with not provide them with the full month's compensation as required under the *Act*. The tenant testified that they paid rent for the entire month of December 2021, and the landlord simply did not collect any rent for January 2022.

The landlord testified that they were unaware of any further compensation owed to the tenant. The landlord testified that they tenant chose to move out before the effective date of the 2 Month Notice, January 31, 2022, and is therefore not entitled to any further compensation or reimbursement of rent.

Analysis

Section 51 of the *Act* reads in part as follows:

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.*

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 days' 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*.

Section 51(1.2) of the *Act* states the following: If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

In consideration of the evidence before me, I find it undisputed that the tenant paid rent for the entire month of December 2021. It is also undisputed that no rent was paid for January 2022, which the landlord believed fulfilled their obligations under section 51(1) of the *Act*.

In consideration of the evidence and testimony before me, I'm satisfied that the tenant did provide the landlord with 10 Day's Notice to end the tenancy on a date earlier than the effective date on the 2 Month Notice, as allowed under section 50(1) of the *Act*. I am satisfied that the tenant notified the landlord on January 8, 2022 that they were giving their 10 day's notice to move out early, which the tenant exercised. I note that although the tenant vacated the rental unit on January 17, 2022, the earliest qualifying date would be January 18, 2022. Pursuant to section 53(1) of the *Act*, incorrect effective dates are automatically changed: "If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable." The effective date of the tenant's notice is therefore corrected to January 18, 2022.

Accordingly, the tenant is responsible for the "proportion of the rent due to the (corrected) effective date of the tenant's notice" as per section 50(1)(b) of the *Act*, which in this case is January 1, 2022 to January 18, 2022, which in this case is \$1,422.58 (\$2,450.00/31 days * 18 days). As noted under section 50(3) of the *Act*, "A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*]." The tenant is therefore entitled to the equivalent of one month's rent, less the \$1,422.58 owed for the period of January 1, 2022 to January 18, 2022.

As the tenant's application had merit, I allow the tenant to recover the filing fee paid for this application.

Conclusion

I issue a \$1,127.42 Monetary Order in the tenant's favour as set out in the table below:

Item	Amount
Compensation under section 51(1) of the Act	\$2,450.00
Less Pro-rated rent owed for January 1-18, 2022	-1,422.58
Recovery of filing fee paid	100.00
Total Monetary Order to Tenant	\$1,127.42

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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.

The tenant's application for the return of their security deposit is dismissed with 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: October 17, 2022

Residential Tenancy Branch