



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord May 11, 2022 (the “Application”). The Landlord sought the following:

- To recover unpaid rent
- Reimbursement for the filing fee

The Landlord appeared at the hearing. The Tenant appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

A witness appeared at the hearing for the Tenant. The witness exited the conference call until required. After hearing from the parties, I asked the Tenant if they still needed to call their witness and they were unable to provide a clear answer to this question. Before I could explain the relevant issues to the Tenant, the Tenant exited the conference call without warning or explanation. I waited five minutes to allow the Tenant to call back into the conference call; however, the Tenant did not do so. I concluded the hearing which took another three minutes. The Tenant did not call back into the conference within the eight minutes of them exiting the conference call and the conference ending. Given this, I did not hear from the Tenant’s witness.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Tenant testified that they only received the Notice of Dispute Resolution Proceeding ("NODRP") from the RTB on January 20, 2023. The Tenant testified that they did not receive the NODRP from the Landlord. However, the Tenant confirmed they were prepared to address the issues raised in the Application on the hearing date and therefore I did not go into this issue further. I also note that the Tenant changed their testimony a few times during the hearing, did not seem to listen to questions being asked of them and did not answer questions in a coherent manner and therefore I did not find the Tenant's testimony particularly compelling.

The Tenant testified that they did not receive the Landlord's evidence. The Landlord testified that they served their evidence on the Tenant in person in May of 2022. The Tenant then changed their testimony and agreed they received the Landlord's evidence in May of 2022 in person. The Landlord's evidence is admissible.

During the hearing, the parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The agreement is between an agent for the Landlord and the Tenant. The tenancy started October 01, 2020, and was for a fixed term ending April 30, 2021. The tenancy then became a month-to-month tenancy. Rent was \$2,300.00 per month due on the first day of each month.

The Landlord testified as follows. The parties signed a Mutual Agreement to End a Tenancy ending the tenancy November 30, 2021. The Landlord suggested to the Tenant that they could end the tenancy through a Two Month Notice for Landlord's Use of Property ("Two Month Notice"), or the parties could sign a Mutual Agreement to End a Tenancy form and the Tenant could stay on as the Landlord's roommate when the Landlord moved back into the rental unit. The Tenant chose the option of signing the

Mutual Agreement to End a Tenancy and stayed in the rental unit as the Landlord's roommate until the end of May of 2022. The Landlord moved into the rental unit in December of 2021. The Landlord owns the rental unit. The Landlord and Tenant shared a bathroom and kitchen once the Landlord moved into the rental unit. The Landlord never issued the Tenant a Two Month Notice.

The Landlord sought unpaid rent of \$2,300.00 for November of 2021 because the Tenant did not pay November rent.

The Tenant agreed they were a tenant in relation to the rental unit up until November 30, 2021, and that the tenancy ended on this date. The Tenant testified that they were under the impression the Landlord issued them a Two Month Notice and therefore they did not have to pay last months rent. The Tenant testified that they believed they were served a Two Month Notice. The Tenant's answers to my questions were unclear; however, the Tenant eventually confirmed they were never issued a Two Month Notice, they received the Mutual Agreement to End a Tenancy form, signed this form and thought the form was a Two Month Notice.

The Landlord submitted the following documentary evidence. Email correspondence between the parties supporting the Landlord's position. A demand letter supporting the Landlord's position. A Mutual Agreement to End a Tenancy signed by the parties.

Analysis

Section 7(1) of the *Act* states that a party who does not comply with the *Act* or their tenancy agreement must compensate the other party for loss that results.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 51 of the *Act* addresses compensation due to tenants served with a Two Month Notice and 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.

I find the Tenant did not receive a Two Month Notice issued pursuant to section 49 of the *Act* because there is no such notice before me. There is a Mutual Agreement to End a Tenancy signed by the parties before me, and I find this is how the tenancy ended. I accept the Landlord's testimony that a Two Month Notice was never issued to the Tenant.

The Tenant was not permitted to withhold one months rent because they were not issued a Two Month Notice, they signed the Mutual Agreement to End a Tenancy which ended the tenancy and does not require the Landlord to give the Tenant one month of free rent. It is not relevant that the Tenant believed or understood the Mutual Agreement to End a Tenancy to be a Two Month Notice, this was a misunderstanding on the Tenant's part and did not entitle the Tenant to withhold rent. Further, the Tenant only had to read the form before signing it to know it was not a Two Month Notice and did not come with a compensation requirement. It is not relevant that the Landlord wanted to move into and use the rental unit and this is the reason the parties signed the Mutual Agreement to End a Tenancy because the fact is the Landlord did not issue the Tenant a Two Month Notice and therefore the Tenant was not entitled to one month of free rent.

The Tenant was required to pay the Landlord \$2,300.00 for rent for November of 2021 pursuant to the tenancy agreement. The Tenant did not have authority under the *Act* to withhold rent. I accept that the Tenant did not pay rent because this is undisputed. The Tenant owes the Landlord \$2,300.00.

Given the Landlord has been successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant owes the Landlord \$2,400.00 and the Landlord is issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$2,400.00 and is issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: January 24, 2023

Residential Tenancy Branch