



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 51(1) for one month’s rent in compensation after receiving a notice to end tenancy under s. 49; and
- return of the filing fee pursuant to s. 72.

M.C. appeared as the Tenant. D.T. and J.T. appeared as the Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the outset of the hearing, I enquired whether the Tenant had served his application and evidence. I was advised that the Tenant had served the Landlords via registered mail sent on May 13, 2022. The Landlords acknowledge receipt of the Notice of Dispute Resolution but deny receipt of any evidence. Upon reconsideration, the Tenant testified that he could not recall if the evidence was also included as mail was sent some 10 months prior to the hearing. I find that the Tenant served the Landlords with the Notice of Dispute Resolution pursuant to s. 89 of the *Act*. As there was no confirmation that the evidence was included in the registered mail and the Landlords deny receipt, I find that the Tenant’s evidence was not served. Accordingly, it shall not be included or considered by me.

The Landlords provided some evidence to the Residential Tenancy Branch, though I was advised by them that it had not been served on the Tenant. As the Landlords admit

that it had not been served, I find that the Landlords' evidence was not served and it shall not be included or considered by me.

Preliminary Issue – Naming of the Tenant

The Landlords highlighted that the Tenant misspelt his surname in the application and that he had a co-tenant. The Tenant confirmed this and the spelling of his name. Policy Guideline #43 provides guidance on the naming of parties and specifies that parties are to be named by using their legal names.

I accept that the Tenant, through inadvertence, omitted to type out his surname correctly. There is no disputing that M.C. was a former tenant to the Landlords under the circumstances. Due to the typographic error, I find it would be appropriate to amend the style of cause to correct the spelling of the Tenant's surname.

I see no issue in the Tenant's failure to list the co-tenant in the style of cause. Policy Guideline #13, which details the rights and responsibilities of co-tenants, indicates that co-tenants share equal rights under the tenancy agreement and are jointly and severally responsible for meeting its terms. In other words, both as a group and an individual they are responsible for complying with the tenancy agreement. Similar to the guidance in Policy Guideline #13 with respect to the security deposit and pet damage deposit, any tenant under the tenancy agreement, either as an individual or a group, may advance the claim. To be clear, the Landlords are only subject to the claim once and do not face the risk of multiple claims from the various co-Tenants for the same claim, which would run afoul the doctrine of res judicata.

Issues to be Decided

- 1) Is the Tenant entitled to compensation under s. 51(1) of the *Act* for a month's rent of compensation?
- 2) Is the Tenant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following aspects with respect to the former tenancy:

- The Tenant took occupancy of the rental unit on December 1, 2021.
- The Landlords obtained vacant possession of the rental unit on May 1, 2022.
- Rent of \$3,700.00 was due on the first day of each month.
- A pet damage deposit and security deposit, both \$1,850.00, were paid to the Landlords.

According to the Tenant, the tenancy agreement was signed in late November 2021 and was for a 6 month fixed term with a right of first refusal. The Tenant says the fixed term was to end on May 1, 2022 and reverting to month-to-month afterwards. He says he was served with a Two-Month Notice to End Tenancy with an effective date of May 31, 2022 (the “Two-Month Notice”) after the Landlords had sold the property. The Tenant further testified that he began searching for alternate accommodations upon receipt the Two-Month Notice and moved out on May 1, 2022. The Tenant says that he is entitled to one month’s rent in compensation and did not receive the same.

The Landlords indicate that the fixed term was to end on May 31, 2022 and that the May 1, 2022 date is incorrect. The Landlords indicate the Tenant is a property manager and had drafted the tenancy agreement, alleging that the end of the fixed term was altered by the Tenant. As mentioned above, no documentary evidence was admitted into record on this matter due to issues related to service. The Landlords confirm selling the property in June 2022 and that the Two-Month Notice was issued at the buyer’s request with an effective date of May 31, 2022. The Landlords argued that the Tenant left a month early as per the fixed term, moving the last of his belongings on May 2, 2022, and is not entitled to any compensation as he was not permitted to leave when he did.

Analysis

The Tenant seeks compensation pursuant to s. 51(1) of the *Act*. Pursuant to s. 51(1) of the *Act*, a tenant who receives a notice to end tenancy under s. 49 is entitled to one month’s rent of compensation from the landlord on or before the effective date of the notice.

In this instance, there is no dispute that the Landlords served a Two-Month Notice on the Tenant with an effective date of May 31, 2022. Both parties confirm that this was due to the sale of the property and the buyer requesting vacant possession.

There was some dispute between the parties when the tenancy ended, either being May 1, 2022 or May 31, 2022. This dispute is largely irrelevant. Whether the tenancy was periodic or fixed when the Tenant vacated, the Tenant was entitled to compensation equivalent to one month's rent. The Landlords have not filed an application seeking compensation for one month's rent, presumably due to the Tenant vacating before the end of the fixed term. As such, I do not consider what is essentially an overlapping claim advanced by the Landlords. I can only deal with the application before me, which is limited to the claim advanced by the Tenant.

The issue with the Tenant's claim is that he confirms rent is due on the 1st, though testified that he vacated on May 1, 2022. The Landlords indicate that the Tenant still had belongings at the rental unit until May 2, 2022. To be clear, as per the tenancy agreement, confirmed by both parties, and s. 26 of the *Act*, the Tenant is obliged to pay rent in full when it is due, in this case on the first of each month. At no point did the Tenant indicate that he paid rent on May 1, 2022. I accept that the Tenant left personal belongings at the rental unit until the second. Accordingly, I find that the Tenant did receive his compensation under s. 51(1) of the *Act* as he did not pay rent for May 2022 when it was due on the first and had not fully moved out until the second. On this basis alone, the Tenant's application is dismissed as he did receive one month's rent in compensation by not paying rent for May 2022, despite vacating after rent was due in full.

I note that s. 50 of the *Act* permits tenants who have received a notice to end tenancy under s. 49 to vacate the rental unit sooner than the effective date of the notice by giving landlords 10 days notice to vacate. However, s. 50(1) of the *Act* is limited to periodic, not fixed-term, tenancies. Regardless of whether the tenancy was periodic or fixed, it does not matter. The Tenant did not pay rent on May 1, 2022 at all and did not vacate until after rent was due in full. Even if it were a periodic tenancy, the Tenant cannot claim prorated return of rent under s. 50(2) of the *Act* as rent had not been paid for May 2022 and, as mentioned above, did receive one month's rent in compensation by not doing so.

Conclusion

The Tenant's application for compensation under s. 51(1) of the *Act* is dismissed without leave to reapply.

As the Tenant was unsuccessful in his application, I find he is not entitled to the return of his filing fee. His claim under s. 72 of the *Act* is dismissed without 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: January 24, 2023

Residential Tenancy Branch