



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on May 6, 2022 seeking compensation for unpaid rent and utilities. Additionally, they seek reimbursement of the Application filing fee. By amendment on June 8, 2022, the Landlord removed a claim for damages to the rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 19, 2023. Both the Landlord and Tenant attended the scheduled conference call hearing. At the outset, I ensured neither party had questions about the process before proceeding.

The Tenant confirmed they received the Notice of Dispute Resolution Proceeding from the Landlord, along with the Landlord’s prepared evidence via registered mail. Reciprocally, the Landlord confirmed they received the prepared evidence from the Tenant.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord and the Tenant both provided a copy of the tenancy agreement in their evidence. The tenancy started on July 1, 2015. The Tenant paid \$1,300 per month by the end of the tenancy. The Tenant paid an initial security deposit amount of \$600.

The Landlord ended this tenancy by serving a Two Month Notice to End Tenancy for Landlord's Use on January 17, 2022. This document, as provided by the Tenant in their evidence, shows the final end-of-tenancy date of April 1, 2022.

The Tenant presented a copy of the Residential Tenancy Branch decision, recording the Tenant's acknowledgement that the tenancy ended on April 30, 2022. As recorded by the Arbitrator in the May 3 decision: "... the Tenant advised that they moved out the week before the end of April 2022." and "The Landlord's Attorney testified that the Tenants gave notice on April 19, 2022 and have not paid rent for the month of April."

The Landlord presented the note they received from the Tenant, dated April 19, 2022. This has the Tenant's signature and states: "Date the tenant plans to leave: May 1, 2022 1PM". In the hearing, the Landlord testified that the Tenant moved out on April 24, 2022. The Landlord submitted that the Tenant overstayed the final end-of-tenancy date because of the prolonged dispute resolution process when the Tenant challenged the Two-Month Notice.

The Landlord submitted that the Tenant did not pay rent for April 1, 2022 as required. They also submitted that May 18 would be the earliest proper end-of-tenancy date that would be acceptable, as per the Act, from the Tenant. The Landlord thus claims the total amount of \$2,080, this being the rent amount of \$1,300 for the April 2022 rent, and \$754 for the "pro-rated amount. . . up to May 18, 2022."

In the hearing, the Tenant confirmed that their move-out date was April 30, 2022, and this was "during the hearing process" in which they disputed the Two-Month Notice. Their understanding was that the final month of the tenancy, as per the Two-Month Notice, was rent-free. They confirmed that they were not staying in the rental unit by April 24 and returned the keys to the Landlord on April 30, 2022. They met with the Landlord again on May 7 and the parties settled the matter of damages in the rental unit, with the Tenant forfeiting the return of the security deposit.

In their evidence, the Tenant provided images of their 2022 rent cheques to the Landlord. The March 2022 cheque shows the amount of \$1,300, paid on March 1, 2022. In the hearing, the Landlord stated there was no dispute that the Tenant paid rent for March 2022.

Analysis

The *Act* s. 7(1) provides for compensation to an affected party for resulting damage or loss where the other party has not complied with the *Act* and/or the tenancy agreement.

By s. 67 of the *Act*, I have authority to determine the amount of compensation, if any, and order the non-complying party to pay that compensation.

In this matter, the Landlord ended the tenancy by way of a Two-Month Notice, setting the end-of-tenancy date to April 1, 2022. The Tenant challenged the eviction process through a dispute resolution, with the hearing scheduled for May 3. In the interim period before the hearing, the Tenant moved out from the rental unit on April 24, 2022 and returned the keys to the Landlord on April 30. There was no dispute from the parties concerning these dates.

The Landlord's claim for compensation has its basis in the April 19 notice from the Tenant. The Landlord's basic point is that this was insufficient notice from the Tenant about their move out from the rental unit by the end of April.

The *Act* s. 51(1) provides for "an amount that is the equivalent of one month's rent payable under the tenancy agreement" where a landlord has issued a Two-Month Notice. Following from this, s. 51(1.1) authorizes a tenant to withhold that amount from the last month's rent, deemed to have been paid to the landlord.

For the purpose of s. 51, I find the effective tenancy end-date was April 30, 2022. I find this date was confirmed by the Arbitrator in the separate dispute resolution proceeding. The Tenant's other application challenging the Two-Month Notice was a period of the Tenant overholding within the rental unit, on a use and occupancy basis.

On the basis of s. 51 of the *Act*, I find the Tenant was not obligated to pay rent for April 2022 – this was the final month of the tenancy. Whatever the obligations for the Tenant about notifying the Landlord of their final move-out date, the Tenant's right to one month as rent-free cannot be denied.

Additionally, s. 50(1) allows a tenant to end a tenancy early by giving a landlord at least 10 days' written notice to end the tenancy earlier than the effective date set out on the Two-Month Notice.

Though the Landlord took issue with the Tenant's April 19 notification – where the Landlord deemed this to be late or insufficient notice from the Tenant – I find the Tenant's notice to the Landlord was acceptable, as set out in s. 50(1). While the Tenant was overholding the rental unit pursuant to their challenge of the Two-Month Notice and would normally be obligated to pay for that overholding period, the s. 51 provision is in place, and in line with that provision, I grant the Tenant has the right to that final month of the tenancy as rent-free.

I find the Tenant's April 19 notice to the Landlord is "at least 10 days' written notice to end the tenancy"; therefore, the Landlord is not entitled to rent owing up until May 18 as claimed.

I dismiss the Landlord's Application for compensation for rent amounts owing. Because the Landlord was not successful in this Application, I grant no reimbursement of the Application filing fee.

Conclusion

I dismiss the Landlord's Application in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 17, 2023

Residential Tenancy Branch