



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated June 30, 2022; and to recover her \$100.00 Application filing fee.

The Tenant, her advocate, W.L. ("Advocate"), and the Landlords, Z.Q. and G.Z., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and the Parties confirmed them in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on December 1, 2021, ran to May 31, 2022, and then operated on a month-to-month basis. They agreed the tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$1,650.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$825.00, and no pet damage deposit. They agreed that the Landlord returned the security deposit to the Tenant in full at the end of the tenancy. The Tenant confirmed that she move vacated the rental unit on July 16, 2022.

In the hearing, the Tenant explained her claim, as follows:

On June 30, 2022, after receiving my July rent payment, the Landlord text messaged me to move out by the end of July. Then I had to find a new place immediately.

Then on July 7, 2022, the Landlord text messaged me again to move out by end of July without offering compensation. I had already found a place. I cleaned and gave back the keys on July 16, 2022. Ten days before that I sent them a 10-day move-out notice, due to fact that I had to move out by the end of July, and I already found a place.

According to section 50 of the Act, I've already paid full rent for July and will need to be reimbursed for days after the tenancy ends. Based on my move-out date listed, the Landlords would owe me for rent for days 15 divided by 31 times the amount of rent, which is \$1,650.00. So, that equals \$798.00. Additionally, according to section 51, it required the Landlord to pay one month rent - \$1,650.00 - as compensation for the last month of my tenancy. Therefore, the total = $798 + 1650 = \$2,448.00$.

The Landlord's text to the Tenant dated June 30, 2022, read:

[Tenant], there is something I need to let you know a month in advance. My daughter is selling her house in August, and she needs to temporarily stay at my

house. There isn't enough space upstairs, so the back suite is needed for her family of three to stay in. So we need you to look for housing and vacate by the end of the month. Honestly, it was a pleasure having you stay here but there isn't an other way. Very sorry, [Landlord]

I asked the Landlords for their response to the Tenant's testimony, and they said:

All the dates look correct. June 30 my Mom sent the Tenant a message re my sister's use of the property, and that [the Tenant] needs to move out. The text wasn't clear if it was an eviction or a negotiation. But as you can see in evidence 5.1, after her move out notice, the Tenant clarified her intention and made it clear that it is a negotiation for mutual move out.

I asked the Landlord to clarify how the Tenant expressed that it was a negotiation, and he referred me to the Landlord's evidence at 5.1 on page five from the Tenant, which states:

Hello [Landlord], I did not misunderstand your meaning, no need to apologize. Regarding the message count as a notice, and the reason for your daughter to move back in is reasonable.

However, to clarify, regarding the term about the 1 month notice on the contract is for me, the tenant, to terminate. If the landlord wishes to terminate the contract, they need to obey the RTB tenancy laws and provide a 2 month notice. So, according to the law, I can live until end of August.

After receiving your message, I have found a place of residence, thank you for your concern. Because according to RTB procedures, if I decide to move out before end of August, I need to provide the landlord with a 10 day notice, which is why I sent you the formal notice earlier.

The Landlords said that they did not mean the June 30 text to be an eviction notice. They said: "That's not what I meant. I wanted to give a head's up to find new place."

The Landlord said they did not intend to require the Tenant to vacate the rental unit at the end of July. They indicated that they intended to negotiate the costs of the end of the tenancy, but that the Tenant did not need to hurry to find another place. However, I find that this was not what the June 30 text said.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 (3) of the Act states that a landlord may end a tenancy of a rental unit, if the landlord or a close family member of the landlord intends to occupy the rental unit. Further, subsection 49 (2) states that the effective date of this eviction notice must be at least two months after the date the tenant receives this notice. As such, in this case, it must have been for the end of August 2022, as the Tenant pointed out.

In addition, section 51 (1) states that a tenant who receives an eviction notice under section 49 is entitled to receive from the landlord one month's rent. The Act states that a tenant may withhold the amount from the last month's rent or if the tenant has paid rent already, the landlord must refund the amount paid.

I find that the Landlords' wording in the June 30, 2022 text to the Tenant clearly told her that she had to vacate the rental unit by July 31, 2022, so that the Landlords' daughter could move in. I find that this is equivalent to the Landlord giving the Tenant an eviction notice under section 49 of the Act – for the use of the Landlord's close family member. I find that the Tenant's response clearly indicated that she had followed their request to leave by July 31, by finding a new place to live. Further, I find that the Tenant's analysis of her rights in this situation are consistent with the Act.

The Tenant used her right under section 50 of the Act, which states that if a landlord gives a tenant an eviction notice under section 49, the tenant may end the tenancy early by (a) giving the landlord at least 10 days' written notice ending the tenancy earlier than the effective date in the landlord's notice. The tenant must also pay the landlord the proportion of the rent that is due to the effective date of the tenant's notice, unless the tenant has already paid rent. In that case, the landlord must refund any rent paid for the period after the effective date of the tenant's notice. This does not affect the tenant's right to compensation under section 51 of the Act.

Accordingly, based on the evidence and authorities before me, I award the Tenant **\$798.00** for her overpayment of rent in July 2022, pursuant to section 50. Further, pursuant to section 51, I award the Tenant **\$1,650.00** for her right to recover the last month's rent of the required two months' notice that the Landlords were required to give her. Also, given her success in this Application, I also award the Tenant recovery of her **\$100.00** Application filing fee, under section 72 of the Act.

I, therefore, grant the Tenant a **Monetary Order** from the Landlords of **\$2,548.00**, pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence to support her burden of proof on a balance of probabilities.

I grant the Tenant a **Monetary Order** from the Landlords of **\$2,548.00**. This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 25, 2023

Residential Tenancy Branch