



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on July 28, 2022. They are seeking an order for compensation from the Landlord's prior end of the tenancy in 2022. Additionally, they seek reimbursement of the Application filing fee.

Pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"), the matter proceeded by hearing on April 24, 2023. In the conference call hearing, I explained the process and offered each party the opportunity to ask questions.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation for the Two-Month Notice to End Tenancy for Purchaser's Use of Property, pursuant to s. 51 of the *Act*?

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

Background and Evidence

With their Application to the Residential Tenancy Branch, the Tenant provided a copy of the tenancy agreement they had in place with the Landlord. This showed the start date of November 1, 2020, for a fixed term, then subject to a subsequent agreement should the parties agree to it. The rent amount was \$1,200 at all times; the Tenant paid a security deposit of \$600 and a pet damage deposit of \$600.

The Landlord issued the Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice") on April 26, 2022. This set the end-of-tenancy date for June 30, 2022.

The reason indicated was that the Landlord or the Landlord's spouse would occupy the rental unit.

The Tenant disputed the validity of the Two-Month Notice through a formal dispute resolution process. The Tenant did not appear at that scheduled hearing on September 15, 2022, and earlier moved out on May 24, 2022, after applying for that dispute resolution process on May 8, 2022.

Prior to the tenancy ending, the Tenant did not receive one month's rent compensation from the Landlord in line with the Two-Month Notice. This is legislated by s. 51(1) of the *Act*.

The Tenant filed this present Application on July 28, 2022 to seek compensation of this one-month rent equivalent.

In this hearing, the Landlord presented that they attempted a forward of the one-month rent amount (*i.e.*, \$1,200) on October 20, 2022. They stated the Tenant did not accept this e-transfer, despite the reminders and other communication they attempted with the Tenant.

In this hearing, the Tenant confirmed they did not accept the e-transfer amount because it did not include the additional \$100 amount that they paid for this present Application filing fee. They also stated the Landlord did not attempt to forward the amount of compensation to them until they made this present Application for dispute resolution.

The Tenant also read information from the Two-Month Notice, to say that the Landlord was past the time limit to pay this compensation to the Tenant:

If this Notice was served under the reasons for landlord's use of property, on or before the effective date of this Notice, your landlord has to compensate you an amount equal to one month's rent payable under your tenancy agreement. You may withhold your last month's rent instead of being paid compensation. If you have already paid your last month's rent, your landlord must refund you that amount.

In this present hearing, the Landlord acknowledged they were obligated, as per the *Act*, to compensate the Tenant this one-month rent amount in line with the Two-Month Notice.

Analysis

Under s. 49 of the *Act* a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Landlord here issued the Two-Month Notice for this reason.

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 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.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and . . . that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

I find the Landlord did not question their obligation, as per the *Act*, to compensate the Tenant for one-month's rent payable under the tenancy agreement. This amount is \$1,200.

I find the Landlord did not have the chance to compensate the Tenant before the end of the tenancy, and before the Tenant filed their previous dispute resolution Application on May 8, 2022. The Tenant moved out from the rental unit on May 24, 2022. Had the Tenant attended the previous scheduled hearing on September 15, 2022, the parties would have had a chance to address this issue. The Tenant did not attend to speak to the matter; therefore, I find the Landlord was not clear on direction.

In fairness to the Landlord, the Tenant did not attend the hearing even though they were fully aware that the matter of one-month's rent compensation was still not resolved. That was the Tenant's opportunity to settle that issue. The Tenant did not attend; therefore, I find that prejudiced the Landlord in this matter, and the Tenant did not present that they communicated at all to the Landlord in order to settle the matter in a reasonable manner. Instead, the Tenant filed another Application to the Residential Tenancy Branch. I find this was not necessary, and the Tenant presented no other evidence that the Landlord was not conceding on the issue of one-month's rent compensation, or otherwise creating difficulty.

The Tenant provided a specious interpretation of a timeline that the Landlord did not follow in compensating the Tenant in this matter. I do not share that interpretation. Page 3 of the Two-Month Notice also states plainly: "If you have already paid your last month's rent, your landlord must refund you that amount." That is precisely what the Landlord here was aware of, and trying to accomplish, with no assistance from the Tenant.

I grant compensation to the Tenant here, as agreed by the Landlord, in the amount of \$1,200. This was really unnecessary to bring to a dispute resolution process had the Tenant communicated in a fair manner to the Landlord here. I find the Tenant did not grant the

Landlord a fair opportunity to resolve the matter, both through their non-attendance at the previous hearing, and by not communicating to the Landlord in the interim period.

Though likely not needed, I grant the Tenant a Monetary Order for the amount of \$1,200. They must accept any form of payment provided to them by the Landlord. The Monetary Order is a measure of surety to the parties that this matter has been concluded at the Residential Tenancy Branch.

I dismiss the Tenant's Application for reimbursement of the Application filing fee for these reasons set out above. I do under authority of s. 62(4)(c), by finding this Application from the Tenant is an abuse of the dispute resolution process.

Conclusion

Pursuant to s. 51(1) of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,200. The Tenant is provided with this Order in the above terms, and they must serve it to the Landlord as soon as possible if necessary. Should the Landlord fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: April 24, 2023

Residential Tenancy Branch