



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 12, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- a monetary order for compensation relating to the Landlord not accomplishing the stated purpose of a Two Month Notice; and
- an order granting the return of the filing fee.

The Tenant, the Landlord, and the Landlord's Agent A.D. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed that they sent the Notice of Hearing to the Landlord. The Landlord confirmed receipt. I find that the Notice of Hearing was sufficiently served to the Landlord pursuant to Section 71 of the Act.

The Landlord stated that they did not receive the Tenant's documentary evidence. The Tenant confirmed that their evidence was not sent to the Landlord.

Preliminary Matters

3.14 Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14

days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

3.17 Consideration of new and relevant evidence.

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Both parties must have the opportunity to be heard on the question of accepting late evidence.

In this case, I accept that the Tenant has not served their evidence to the Landlord. The Tenant stated that they did not know they were required to. The Landlord stated that it is unfair that they did not receive the Tenant's evidence as they have not had an opportunity to respond to it. I find that the Tenant's evidence does not constitute new evidence. I find that I cannot consider the Tenant's evidence in this decision as doing so would prejudice the Landlord. Only the Tenant's oral testimony will be considered.

The Tenant confirmed having received the Landlord's documentary evidence. I find the Landlord's evidence was sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 6, 2016. The parties agreed that they entered into a new tenancy agreement in October 2021 in which the Tenant was required to pay \$1,100.00 per month rather than the \$800.00 that the Tenant had been paying. The parties agreed that the Tenant did not pay the increase amount of the Landlord. The Tenant paid a security deposit in the amount of \$400.00 which has since been returned to the Tenant. The Tenancy ended on August 1, 2022.

The parties testified and agreed that they came together on June 30, 2022, and signed a Mutual Agreement to End Tenancy effective August 1, 2022. A copy of the Mutual Agreement was submitted by the Landlord in support.

The Tenant is claiming for compensation in the amount of \$1,850.00 as he was required to take time off work to look for another residence as he only had 30 days to move out based on the mutual agreement.

The Tenant is also claiming for compensation in the amount of \$9,600.00 to do with a Two Month Notice to End Tenancy as the Tenant was under the impression that he had to move because of the Landlord selling the rental unit. The Tenant stated that the rental unit did not sell, and that the Landlord continues to occupy the rental property. The Tenant confirmed that while he is claiming for compensation relating to a Two Month Notice, he was never served with a Two Month Notice.

The Landlord's Agent stated that the Tenant had not been paying rent when due and was in arrears with rent payments to the Landlord. The Landlord's Agent stated that the Tenant notified the Landlord that they found another place to rent that was cheaper. As such, the Landlord's Agent stated that the Landlord prepared a Mutual Agreement to End Tenancy which was signed by all parties. The Landlord's Agent confirmed that the Landlord did not serve a Two Month Notice.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenant is claiming for compensation in the amount of \$1,850.00 after having to take time off work to find another rental unit. I accept that the parties mutually agreed to end

the tenancy on August 1, 2022. I note that the Mutual Agreement to End Tenancy signed between the parties clearly indicates at the top of the page:

“This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.”

I find that the Tenant was not obligated to sign the Mutual Agreement to End Tenancy. I find that the Tenant consented and agreed to the tenancy ending on August 1, 2022. I find that the Tenant is not entitled to compensation from the Landlord for having to move out on the effective date of the Mutual Agreement as the Tenant agreed to move out on that date.

The Tenant is also claiming \$9,600.00 as the Landlord did not accomplish the stated purpose of the Two Month Notice to End Tenancy for Landlord Use.

According to Section 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, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case I accept that the parties agreed that the Landlord did not serve the Tenant with a Two Month Notice. I find that the Tenant's claim for compensation is specific to Section 51 of the Act which refers to a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*]. As the Tenant was never served with a Notice under Section 49 of the Act, I find that the Tenant is not entitled to compensation under Section 51 of the Act.

I find that the Tenant's Application is not successful, therefore, the Tenant's Application is dismissed in its entirety without leave to reapply.

Conclusion

The Tenant's Application 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: May 08, 2023

Residential Tenancy Branch