



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on December 1, 2022. The Tenants' application discloses a request for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property under section 51(2) of the Residential Tenancy Act (the Act). However, the application is clear, and the Tenants confirmed, that they are seeking compensation under section 51(1) of the Act, and to recover the filing fee. Pursuant to section 64(3) of the Act, I amend the Tenants' application accordingly.

The Tenants attended the hearing. The Landlord was represented at the hearing by MP, an agent. The Tenants and MP provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, SZ testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on December 8, 2022. MP acknowledged receipt of these documents. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Landlord did not submit documentary evidence in response to the application.

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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to compensation from the Landlord pursuant to section 51(1) of the Act?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 1, 2018. During the tenancy, rent was due in the amount of \$1,552.00 per month. The Tenants paid a security deposit of \$750.00 and a pet damage deposit of \$750.00, which the Landlord holds.

SZ testified that on September 3, 2022, the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property, which had an effective date of November 30, 2022 (the Two Month Notice). A copy of the Two Month Notice was submitted into evidence. SZ testified that rent was paid when due on September 1 and October 1, 2022, but was not paid on November 1, 2022. SZ confirmed the Tenants moved out of the rental unit on November 28, 2022, in accordance with the Two Month Notice.

In response, MP testified that the Tenants were given the option of choosing a date on which the tenancy would end. He stated that whatever effective date the Tenants chose would have been indicated on the Two Month Notice. MP also testified that rent was never paid on time during the tenancy, and that the rental unit was not cleaned properly at the end of the tenancy. MP asserted that it was never the Landlord's intention to force the Tenants out of the rental unit. MP testified that it is the Landlord's position that the Tenants owe \$1,552.00 for rent due on November 1, 2022.

Analysis

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

Section 51(1) of the Act confirms that a tenant who receives a two month notice to end tenancy for landlord's use of property is entitled to receive the equivalent of one month's rent. Section 51(1.1) confirms that the last month's rent may be withheld in satisfaction of the amount due under section 51(1).

In this case, the parties agreed that the Tenants received the Two Month Notice on September 3, 2022. The parties also agreed that the Tenants did not pay rent on November 1, 2022, and remained in the rental unit until at least November 28, 2022.

Considering the above, I find the Tenants were entitled to receive compensation in the amount of one month's rent under section 51(1) of the Act, and that this amount was satisfied when they remained in the rental unit until the effective date of the Two Month Notice without paying rent on November 1, 2022. The Tenants are not entitled to additional compensation under section 51(1) of the Act. Therefore, the Tenants' request for compensation is dismissed without leave to reapply.

After careful consideration, I find the Tenants' application was unnecessary as they have already received compensation under the Act. Therefore, I decline to grant recovery of the filing fee to the Tenants.

During the hearing, the parties agreed that the Landlord continues to hold a security deposit (\$750.00) and a pet damage deposit (\$750.00), more than eight months after the tenancy ended. That matter was not before me. However, for information concerning the responsibilities of landlords and tenants when dealing with security deposits, the parties are encouraged to contact an Information Officer at the Residential Tenancy Branch: 1-800-665-8779.

Conclusion

The Tenants' 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: August 28, 2023

Residential Tenancy Branch