



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on May 12, 2023 seeking:

- compensation for monetary loss or other money owed;
- reimbursement of the Application filing fee.

The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 1, 2023. In the conference call hearing I explained the process and provided the attending participants the opportunity to ask questions.

Both parties attended the hearing and each confirmed service of the prepared evidence by the other. The Landlord received pieces of the Tenant’s evidence directly from the Residential Tenancy Branch after they made a written request to the Residential Tenancy Branch on July 10, 2023.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss/other money owed, pursuant to s. 67 of the *Act*?

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

Background and Evidence

The Tenant provided a copy of the tenancy agreement they had with the previous landlord, signed on May 14, 2022 for the tenancy that started on June 1, 2022. The agreement sets out a fixed-term tenancy to end on May 31, 2023. The rent amount was \$3,350, payable on the first day of each month.

The Landlord became the owner of the rental unit property at the end of October 2022, and the tenancy agreement was transferred to them. In the hearing, the Landlord drew particular attention to the fact that the tenancy agreement was a fixed-term tenancy agreement, to end on May 31, 2023.

The Landlord issued a Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice") on March 25, 2023. The Tenant in the hearing stated they received this document from the Landlord on March 26, 2023. This set the end-of-tenancy date as June 1, 2023. In the hearing, the Landlord pointed to the end of fixed-term tenancy date, with the end-of-tenancy date specified on the Two-Month Notice being the same date.

On April 16, the Tenant provided a notice to the Landlord specifying that "The last day of my tenancy will be 27th April 2023." In this notice, the Tenant drew attention to s. 50 of the *Act*. The Tenant set out that they "already paid my full rent for this month [*i.e.*, April 2023] and will need to be reimbursed for the days after our tenancy ends." This is: 3 days' rent for April \$335, and a return of the post-dated cheque for May 2023 they had previously sent to the Landlord.

In the hearing, the Tenant described having a response to this notice from the Landlord on April 20, 2023. The Landlord gave specifics about the move-out process to the Tenant, and there was no indication from the Landlord in that communication that an early end to the tenancy was a problem.

The Tenant then moved out on April 27, 2023. In the interim period, the Landlord had returned the post-dated May 2023 rent cheque to the Tenant.

The Tenant claims compensation for one full month of rent. As set out in their written submission: "...after completing the condition inspection report and taking the keys back, [the Landlord] only refunded us the rental deposit [*i.e.*, the security deposit] and May cheque and refused to pay is the pro-rated rent for April and the 1 month compensation."

In the hearing, the Tenant specified that receiving the post-dated May rent cheque returned to them is not compensation as per the *Act*, because the Landlord obtained the keys at that final meeting. If the Tenant wanted to have that as the last month, they were precluded from living

there through May at that time. The Tenant also described the hardship they endured with having to move after the end of this tenancy.

The Landlord provided a 6-page response to the Tenant's Application, in their evidence. They set out clearly that the effective date of the Two-Month Notice was June 1, 2023, and "the tenants were compensated one month's rent as the uncashed May rent cheque was returned to the tenants upon move out." Moreover, "the tenants were still within the 12 months fixed term tenancy" so they could not end the tenancy earlier than the end of the fixed term.

Analysis

I find as fact that the parties had in place a fixed-term tenancy agreement. This had not reverted to a month-to-month agreement when the Landlord served the Two-Month Notice to the Tenant on March 26, 2023.

The *Act* s. 49 gives the Landlord the right to end a fixed-term tenancy if they, or a close family member, intends in good faith to occupy the rental unit. The Tenant did not dispute the Landlord issuing the Two-Month Notice; therefore, the question of good faith as revealing of the Landlord's intentions with the rental unit is not the relevant question in this present hearing.

The *Act* s. 49(2)(b)(iii) is very specific on the effective end-of-tenancy date provided by a landlord: if the tenancy agreement is a fixed term tenancy agreement, that date is not earlier than the date specified as the end of the tenancy.

The Two-Month Notice in its entirety appears in the Tenant's evidence. The end-of-tenancy date was set at June 1, 2023. This is the day after the end of the fixed-term tenancy, set at May 31, 2023 in the original agreement. I find the Landlord abided by s. 49 in not ending this fixed-term tenancy earlier than the allowed date.

Page 3 of the Two-Month Notice of that document provides the following information:

If your tenancy is periodic (e.g., month-to-month), you can end the tenancy sooner than the date set out in this Notice as long as you give the landlord at least 10 days written notice and pay the proportion of rent due to the effective date of that notice. Ending the tenancy does not affect your right to the one-month compensation above. Fixed term tenancies cannot be ended earlier than the end of the term.

The *Act* s. 51 sets out a tenant's right to compensation as stemming from a s. 49 end-of-tenancy notice (*i.e.*, landlord's use of property). That is "an amount that is the equivalent of one month's rent payable under the tenancy agreement."

The *Act* s. 50(1) sets out that a tenant may end a tenancy early under certain sections. This covers an end-of-tenancy notice under s. 49 (*i.e.*, landlord's use of property):

If a landlord gives a tenant notice to end a periodic tenancy under s. 49 . . . , the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice . . .

In the hearing, the Landlord specifically pointed to the portion of this section that specifies its' applicability only in a periodic tenancy.

Following this, the *Act* s. 50(3) also specifies that a notice from a tenant under this section does not affect the Tenant's right to compensation under s. 51.

Also applicable in this situation is the *Act*, s. 45(2), concerning a tenant's notice:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Tenant chose to end the tenancy early. As per s. 45(2), they were not permitted to end this fixed-term tenancy earlier than the specified end-of-tenancy date, May 31, 2023. This was also set out on page 3 of the Two-Month Notice.

I find s. 50(1) does not apply in this situation, with that section in the *Act* only permissible in a periodic tenancy.

I find the Landlord returned the Tenant's final month rent payment, and the Landlord did not collect that amount of rent for the final month of the tenancy that was May 2023. The Tenant provided that they were precluded from occupying the rental unit throughout May because they returned the key to the Landlord; however, that was the Tenant's choice to end the tenancy on that date, and the Landlord was not barred from accepting that end-of-tenancy date and following through with other procedures in the end of this tenancy.

I find the Landlord granted the final legal month of this tenancy to the Tenant. There is no other compensation in this situation. The Tenant is not entitled to any other compensation because they violated s. 45(2)(b) of the *Act*.

The Tenant added 3 days of April rent to their claim, as a pro-rated amount for the final 3 days of that month after they moved out on the 26th. I find s. 45(2)(c) applies to this situation, with the Tenant ending the tenancy earlier than the *Act* permits. They are not entitled to compensation for these three days because of this violation of s. 45(2)(c) of the *Act*.

For the reasons above, I dismiss the Tenant's Application. The Tenant was not successful in this Application; therefore, there is no reimbursement of the Application filing fee to them.

Conclusion

For the reasons above, I dismiss the Tenant's Application, 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: August 1, 2023

Residential Tenancy Branch