



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR MNDC FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The tenant representative (hereinafter called 'the tenant') provided evidence that they personally received a Two Month Notice to End Tenancy for landlord's use of the property dated December 28, 2016 to be effective March 1, 2017 and the landlord said the tenants handed him a 10 Day Notice to End Tenancy on that same day and paid him rent to January 8, 2017. The tenant said they had served the landlord with the Application for Dispute Resolution by registered mail on March 16, 2017. The male landlord said he had not received it until April 4, 2017 and he sent in his evidence to the Residential Tenancy Branch yesterday (April 17, 2017). The female attending the hearing with the male landlord said she was a co-landlord and was never served with the documents. The tenant said the male was the only landlord on the tenancy agreement and on the Two Month Notice to End Tenancy for landlord's use of the property. She said she had a copy of the tenancy agreement with no female landlord named on it. The male landlord claims his copy shows the female as a co-landlord so she should have been served. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) to obtain the refund of one month's free rent pursuant to sections 49 and 51 and to recover the filing fee for this application.

Preliminary Issue:

On verifying the registration number for service of the Application, I find it was served on March 16, 2017 as the tenant stated. I find the landlord is deemed to have received it on March 21, 2017 according to section 90 of the Act. I find the landlord was left a notice card by Canada Post on March 17, 2017 that it was available but he chose not to pick it up until April 4, 2017. In the hearing, he said he had not been on holiday or anything. Based on the evidence available today, I find he was served according to section 89 of the Act. I find although the Application was available and he was notified on March 17, 2017, he chose not to pick it up until April 4 and chose not to send evidence until April 17, 2017. As the hearing was on April 18, 2017, I did not receive his evidence so I gave the parties until Friday April 21, 2017 to submit further evidence on the question of the landlord for the purposes of service. I received a tenancy agreement from both parties and some statements, emails and letters from the landlord on April 21, 2017.

Issue(s) to be Decided:

Which parties should have been served with the Application? Has the tenant proved on the balance of probabilities that they are entitled to a refund of rent pursuant to section 51 and to recover their filing fee?

Background and Evidence

Both parties including a female witness who claimed she was a co-landlord attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The parties agreed the tenancy began on September 1, 2015, rent was \$2800 and a security deposit of \$1400 was paid. The parties agreed there is no dispute on the security deposit as there was a settlement and an agreed amount refunded. The landlord served the Two Month Notice to End Tenancy for landlord's use of the property on December 28, 2016 and the tenant handed him a 10 Day Notice to End Tenancy effective January 8, 2017 on that day together with 8 days rent for January, 2017. They received no free month's rent and claim it today for January 2017.

The landlord's evidence, submitted late, enumerates problems with the tenancy and the amount of damage they claimed the tenant caused. He does not dispute the fact that he served the two month notice for landlord's use of the property and gave no free month's rent in compensation.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The ***Residential Tenancy Act*** provides in section 51(1) that a tenant who receives a Notice to End Tenancy for landlord's use of the property is entitled to receive compensation in the equivalent of one month's rent. Section 50 provides that the tenant may end the tenancy early by giving at least 10 days written notice to end the tenancy earlier than the effective date of the landlord's two month notice and paying the landlord on the date of their 10 day notice, the proportion of the rent due to the effective date of their notice. I find the parties agreed that the tenant complied with these provisions..

I find section 51 (1.1) and (1.2) provide that if the tenant has not received one free month's rent or withheld that amount, the landlord must refund that amount. I find the weight of the evidence is that the landlord has not provided compensation of a free month's rent. I find the tenant entitled to a free month's rent or \$2800 pursuant to the section 49 Notice to End Tenancy served on them. As provided in section 50(3), I find that the tenant's 10 day notice does not affect their right under section 51 to one month's refund of rent as compensation.

Regarding the surprise attendance and question of service raised by the female landlord, I find the tenants did not name her on their Application. I find section 89 of the Act requires service of the Application to parties named in the Application. General law in contract is that if there is more than one landlord (or tenant) to a tenancy agreement, their obligations are joint and several unless the agreement says otherwise. If a tenant is owed money, each landlord owes it. A tenant can pursue either or both. If the tenant pursues only the one and gets paid, the paying landlord can claim contribution from the other landlord in a separate (court) proceeding. In examining the late evidence, I find the male landlord was the only landlord who *signed* the lease, the male landlord was the one who issued the Two Month Notice to End Tenancy and he

issued all the emails and letters between the parties in evidence. I find it was reasonable for the tenants to pursue their Application against him as the landlord. As the Application did not name the female who was a landlord on the first page of the tenancy agreement and she was not served with the Application, the Monetary Order in favour of the tenants will be issued against the male landlord only who may claim contribution from the female.

In respect to the landlord's list of damages in his late evidence, I find this is not his Application and I decline to consider his complaints and claims. I find parties may bring Applications within the legislated time limits and if he wishes to pursue damages, he must file his own Application.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

One Month Free Rent Compensation	2800.00
Filing fee	100.00
Total Monetary Order to Tenants	2900.00

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: April 22, 2017

Residential Tenancy Branch