



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act in the amount of \$1,800.00; and to recover the \$100.00 cost of his Application filing fee.

The Tenant, the Landlord, and two agents for the Landlord ("Agents") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and the Parties confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 1, 2017 and ran to May 1, 2018, and that the Parties signed new, fixed-term tenancy agreements, thereafter. The last tenancy agreement submitted by the Landlord states that the tenancy shall end on August 1, 2020, at which time the Tenant must move out.

The Parties agreed that the Tenant paid the Landlord a monthly rent of \$1,800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$875.00, and no pet damage deposit. They agreed that the Landlord returned the Tenant's security deposit to him at the end of the tenancy.

The Parties agreed that tenancy ended after the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use dated July 27, 2020. They agreed that the Tenant vacated the rental unit on September 1, 2020.

The Tenant is claiming that the Landlord owes him a month of free rent, because she gave him a Two Month Notice to end the tenancy, effective as of September 30, 2020.

The Landlord claims that the tenancy was due to end on August 1, 2020, according to the tenancy agreement, but that the Landlord granted the Tenant an extension on the fixed term lease. Therefore, the Agent said that the Landlord did not have to give the Tenant as much notice as she did give him, and that the compensation provisions of the Two Month Notice do not apply.

The Landlord submitted form #RTB-34, Proof of Service Notice to End Tenancy regarding a Two Month Notice to End Tenancy (form RTB-32). On RTB-34, the Tenant acknowledged having received the Two Month Notice on July 27, 2020. The effective date of a Two Month Notice served in person on July 27, 2020 would have been September 30, 2020, according to section 49 (2) of the Act.

The Tenant submitted a document he said he wrote dated August 11, 2020. In this document, the Tenant advised the Landlord that the Tenant would be vacating the rental unit on August 31, 2020. This document was signed by the Tenant, his wife, the Landlord, and the Agent, Z.J.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

The Parties are referred to Policy Guideline 30 (“PG #30”) for a detailed explanation of the change to the legislation and how it affects a fixed term tenancy. PG #30 states:

A. LEGISLATIVE FRAMEWORK

Section 1 of the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date. Neither party may end a fixed term tenancy early, except under the circumstances described in section C of this guideline.

Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term if:

- The tenancy agreement is a sublease agreement; or
- The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation.

Transitional provisions in the Legislation apply this change retrospectively. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances.

The Legislation allows for limited circumstances where a vacate clause in a tenancy agreement is enforceable:

- The tenancy agreement is a sublease agreement;
- The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation; or
- If one of the following occurred before October 26, 2017:
 - (i) the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit, with a new tenant for the rental unit, or
 - (ii) the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing tenancy agreement.

[emphasis added]

Section 104.3 was enacted on December 11, 2017, and it prevents landlords from

imposing vacate clauses in fixed term tenancy agreements, a) unless the tenancy is a sub-lease; or b) unless the landlord or a close family member intends in good faith at the time of entering the tenancy agreement to occupy the rental unit at the end of the term, pursuant to section 104.3(1)(b) and section 13.1 of the *Residential Tenancy Act* Regulation.

Section 49(3) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if: "...the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

I find that if the Landlord had not served the Tenant with a Two Month Notice, that the tenancy would have continued on a month-to-month basis, as the vacate clause would have been unenforceable, pursuant to the legislative change noted above. Accordingly, I find that the tenancy ended, because of the Two Month Notice.

Section 50 of the Act allows a tenant to end a tenancy early, following the tenant's receipt of a two month notice. This requires the tenant to a) give the landlord at least 10 days' written notice that is earlier than the effective date of the landlord's notice; and b) paying the landlord the proportion of the rent due to the effective date of the tenant's notice. In this case, the Tenant would not have to pay anything, because of the one-month free clause set out in section 51.

Section 51 of the Act sets out a tenant's compensation, after the landlord serves the tenant with a two month notice to end the tenancy under section. Such a tenant is entitled to receive an amount that is the equivalent of one month's rent payable under the tenancy agreement. Generally, it amounts to the tenant not having to pay rent for the second or last month prior to the end of the tenancy.

Pursuant to the Landlord's Two Month Notice, the tenancy was scheduled to end on September 30, 2020. Accordingly, the Tenant was required to pay rent for August 2020, but not for September 2020, pursuant to section 51.

The Tenant gave the Landlord notice to end the tenancy (one month) early, pursuant to section 50. I find that the Tenant has already benefited from getting one month free, by not having had to pay the Landlord rent for September 2020.

I, therefore, dismiss the Tenant's Application wholly without leave to reapply.

Conclusion

The Tenant is unsuccessful in his Application for compensation of \$1,800.00 from the Landlord, as the Tenant had already benefited from the purpose of the one month free contained in section 51(1) of the Act. The Tenant's Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 22, 2021

Residential Tenancy Branch