



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in the amount of the monthly rent payable under the tenancy agreement, pursuant to section 51(1); and
- an authorization to recover the filing fee for this application, under section 72.

Tenant NC and landlord PT (the landlord) attended the hearing. Tenant NC was assisted by interpreters TL and JL (the tenant). Witness for the landlord RY also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue - Service

The tenant served the notice of hearing via registered mail on January 12, 2022 and the evidence on July 24, 2022.

The landlord confirmed receipt of the notice of hearing and the evidence (the materials) and that she had enough time to review the materials.

Based on the undisputed testimony, I find the tenant served the materials in accordance with section 89(1) of the Act.

The landlord did not serve the response evidence to the tenant.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Per Rule of Procedure 3.15, I excluded the landlord's response evidence.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order under section 51(1) of the Act?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on October 01, 2017 and ended on April 15, 2021. The tenancy started as a fixed-term tenancy and continued as a periodic tenancy in 2018. Monthly rent when the tenancy ended was \$2,050.00, due on the first day of the month. The landlord collected and returned a security deposit in the amount of \$2,000.00.

The tenant's application states:

The landlord gave me "Two Month Notice" on Feb 21, 2021 and I sent the landlord "Notice to leave" on March 16, 2021. And I had paid the March 2021's rent on March 2nd.

In the case we stayed at the property until April 30, 2021 it would be understandable for the landlord to keep all of March 2021's rent. However, as we stayed only until April 15, 2021, the free one month of rent should be applied from March 15 to April 15.

Therefore, the rent from March 15 to 31 should be returned. This is not something the tenant and landlord need to come to an agreement with, this is written on the rent regulation- "Compensation: One-Month's Rent".

Both parties agreed the landlord served and the tenant received a 2 month Notice to end tenancy for landlord's use (the Notice) on February 21, 2021. The Notice's effective date was April 30, 2021.

The tenant served a tenant's notice to end tenancy (the tenant's notice) via registered mail on March 16, 2021. The tenant's notice states:

Date: March 14, 2021.

[...]

Please accept this letter as my notice to vacate the premises located at [rental unit's address].

I will be vacating the unit on or before April 15th, 2021.

The landlord confirmed receipt of the tenant's notice.

Both parties agreed the tenant paid rent in the amount of \$2,050.00 on March 01, 2021 and did not pay rent on April 01, 2021.

Analysis

Sections 49(2) and (3) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) 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, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

Section 50 of the Act states:

(1)If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify] or the tenant receives a director's order ending a periodic tenancy under section 49.2 [director's orders: renovations or repairs], 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 or director's order, and (b)paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
(2)If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
(3)A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

(emphasis added)

Section 51(1) of the Act provides that:

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.

Residential Tenancy Branch Policy Guideline 50 states:

Section 51(1) of the RTA requires a landlord who gives a notice to end a tenancy for landlord's use under section 49 to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a valid notice to end tenancy for landlord's use 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.

[...]

A tenant who is entitled to receive one month's rent under these sections may instead withhold that amount from the last month's rent. If the tenant ends the tenancy earlier in these circumstances, as permitted by section 50 of the RTA, and before withholding the last month's rent, the landlord must refund that amount.

I accept the uncontested testimony that the landlord served, and the tenant received, the Notice to terminate the periodic tenancy on February 21, 2021 and that the Notice's effective date was April 30, 2021.

I accept the uncontested testimony that the tenant served the tenant's notice on March 16, 2021. Per section 90(a) of the Act, I deem the landlord received the tenant's notice on March 21, 2021.

I accept the uncontested testimony that the tenant paid rent on March 01, 2021 in the amount of \$2,050.00 and the tenant did not pay rent on April 01, 2021.

Based on the uncontested testimony, I find the tenant paid rent on March 01, 2021 for the period of March 01 to 31, 2021.

Per sections 51(1) and 50(2) of the Act, the tenant is entitled to one month's rent. As the tenant paid rent in full on March 01 for the period of March 01 to 31, served the tenant's notice on March 16 and moved out on April 15, 2021, the tenant is entitled to receive from the landlord an amount that is equivalent to half month's rent.

Thus, I award the tenant the amount of \$1,025.00 (half of \$2,050.00).

As the tenant's application is successful, I award the tenant the return of the \$100.00 filing fee.

In summary, the tenant is entitled to \$1,125.00.

For the purpose of educating the landlord, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. The value of the security deposit accepted by the landlord was unlawful.

Conclusion

Pursuant to sections 51(1) and 72 of the Act, I grant the tenant a monetary order in the amount of \$1,125.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order. Should the landlord fail to comply with this order, this order may

be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 10, 2022

Residential Tenancy Branch