



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation, and the recovery of their filing fee paid for this application. The matter was set for a conference call.

The Tenant attended the hearing and was affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that the Landlord had been served the Application for Dispute Resolution and Notice of Hearing documents by Canada Post Registered mail, sent on August 25, 2022, and provided a tracking number for the mailing. Therefore, I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties agreed that they have exchanged the evidence that I have before me in these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that this tenancy began on June 28, 2020, that rent in the amount of \$2,182.00 was to be paid by the first day of each month, and that at the outset of the tenancy, the Tenant had paid a \$1,075.00 security deposit to the Landlord. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that the Landlord served them with a Two-Month Notice to End Tenancy for the Landlord's Use of the Property dated May 24, 2022. The Notice had an effective date of August 1, 2022. The Tenant submitted a copy of the Notice into documentary evidence.

The Tenant testified that on June 14, 2022, they served the Landlord with a 10-day Notice to end the tenancy earlier than indicated on the Two-Month Notice, listing an end of tenancy date of June 30, 2022. The Tenant testified that they issued their 10-day notice to the Landlord via email sent to the Landlord's Agent on June 14, 2022.

The Tenants testified that they paid the rent in full for June 2022 and that the Landlord has refused to pay them the one-month compensation due to them for the Landlord ending their tenancy for the Landlord's use of the property.

The Tenant testified that they have a copy of their June 14, 2022, email and a response to that email that the Landlord Agent sent them, but that they had neglected to submit copies of those emails to these proceedings.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenant has claimed that they did not receive the compensation due to them under section 51 of the *Act*. I accept the undisputed testimony of the Tenant that the Landlord served a Notice to end their tenancy pursuant to section 49 of the *Act* dated May 24, 2022, and that the Notice recorded an effective date of August 1, 2022. Section 51 of the *Act* states that any tenant who receives a Notice pursuant to section 49 of the *Act* is entitled to receive an amount that is the equivalent of one month's rent payable under the tenancy agreement as compensation.

Tenant's compensation: section 49 notice

51 (1) *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.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

The Tenant has claimed that they issued a 10-day notice to end their tenancy before the effective date of the Landlord's Notice, and that they moved out of the rental unit on June 28, 2022. Pursuant to section 50 of the *Act*, a tenant who is in receipt of a notice to end their tenancy under section 49 of the *Act* has the right to end their tenancy earlier than the effective date of the notice by giving the landlord at least 10 days written notice.

Tenant may end tenancy early following notice under certain sections

50 (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], 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, 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].

I find that the crux of the Tenant's case is that the Tenant move out before the effective date of the Landlord's Notice, that they ended their tenancy earlier than the effective date on the Notice as permitted under section 50 of the Act, and that instead of using the one-month rent compensation as a rent payment for July 2022, the Tenant has submitted that they should have been paid out the one-month rent compensation, as they chose to move out early.

However, I find that I am unable to confirm the Tenant's claim that they issued a 10-day Notice to end their tenancy before the effective date of the Landlord's Notice, as the Tenant has failed to include a copy of their 10-day notice into documentary evidence.

In the absence of sufficient, I find that the Tenant has not proven to my satisfaction that they move-out of the rental unit before the effective date of the Landlord's notice or that they had issued a 10-day notice pursuant to section 50 of the Act.

Therefore, I find that there is insufficient evidence before to prove that this tenancy ended before the effective date listed on the Landlord's Notice to end tenancy.

Consequently, I dismiss the Tenant's application for a monetary order for compensation pursuant to section 51 of the Act.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was not successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

Conclusion

I dismiss the Tenant's claim in its entirety.

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 25, 2023

Residential Tenancy Branch