

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. The tenant testified that she served the landlord with the application for dispute resolution and notice of hearing just 5 calendar days before the hearing. The landlord did not participate in the conference call hearing and did not send in any documentation, arrange for an agent to attend on her behalf or request an adjournment. Although the tenant clearly did not comply with section 59(3) of the Act which requires her to serve her application on the respondent within 3 days of making the application, there is no evidence before me that the landlord was prejudiced by the delay. I accepted that the landlord had been served and the hearing proceeded in her absence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The tenant testified that she vacated the rental unit on January 31, 2009 pursuant to a notice to end tenancy given under section 49(3) of the Act, that the landlord or a close family member intended in good faith to occupy the rental unit. The tenant had disputed the notice, but in a decision dated December 19, 2008, a Dispute Resolution Officer found that the landlord had established grounds to end the tenancy. The tenant testified that she had a discussion with the people who currently occupy the rental unit and discovered that they are not family members of the landlord. The tenant seeks compensation under section 51(2) of the Act for \$1,400.00, which is equivalent to double the monthly rent she was paying during her tenancy. The tenant further seeks compensation for lost wages, gas, moving van rental, steam cleaning, and the costs of filing and preparing for the previous dispute resolution hearing.

Analysis

Section 51(2) of the Act provides as follows:

51(2) In addition to the amount payable under subsection (1), if

51(2)(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

51(2)(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Based on the tenant's undisputed testimony, I find that the landlord failed to use the rental unit for the purpose stated in the notice to end tenancy. I find that the landlord is liable under section 52(2) to pay the tenant \$1,400.00, which is double the \$700.00 per month rent the tenant paid during the tenancy. I award the tenant \$1,400.00.

The tenant's claim for the value of lost wages, gas, moving van rental, steam cleaning, and the costs of filing and preparing for the previous dispute resolution hearing is dismissed. Because the legislation has provided for a penalty to be levied against landlords who unlawfully evict tenants, the tenant is limited to recovering the amount of the penalty. As for the costs incurred for the previous dispute resolution hearing, the tenant's claim to recover the filing fee in the previous application was dismissed and cannot be adjudicated upon a second time. Further, I have no authority to award litigation-related costs other than a filing fee.

The tenant is entitled to recover the \$50.00 filing fee paid to bring the current application.

Conclusion

I grant the tenant an order under section 67 for \$1,450.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated June 10, 2009.
