



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The tenant raised other issues and also seeks to recover the cost of the filing fee.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on October 02, 2009. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on October 07, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the Landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the tenant entitled to money owed or compensation for damage or loss under the *Act* and if so how much?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy was due to start on October 01, 2009. The tenant and landlord entered into a signed tenancy agreement on 15, September, 2009. Rent for this property was agreed at \$1,400.00 per month and the tenant paid a security deposit of \$700.00 on September 15, 2009.

The tenant testifies that she viewed the property with the landlord and had some concerns about the For Sale sign that was present at the property. She claims she spoke to the landlord about whether the house was still for sale or not. The tenant testifies that the landlord told her that it had been for sale for a long time but with no interest. The tenant agreed to take the property and they verbally agreed that if the house was sold during the tenancy that the landlord would either give the tenants three months notice to move or compensate them three months rent.

The tenant testifies that at first the landlord agreed that she would give her a key prior to the move in date so she could start to bring some personal belongs to store in the garage. The landlord failed to give the tenant a key and each time the tenant arranged a moving truck the landlord failed to provide her with a key. The tenant testifies that she had some concerns but thought that the landlord just did not want her bringing her belongings to the property before October 01, 2009. The landlord again agreed to give the tenant a key on the Friday September 25, 2009 in the morning but later that day she telephoned the tenant to tell her the house had been sold and the new owners wanted to move in on October 01, 2009.

The tenants present home had been re-rented by this time and they had to find alternative accommodation. The tenant testifies that she feels the landlord misrepresented the property being for rent when it had actually been sold and feels the landlord just wanted a back up renter in case the sale fell through. The tenant seeks compensation of three months' rent as agreed with the landlord if she could not provide the tenant with three months notice to end the tenancy.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the tenant as the landlord failed to appear at this hearing despite having been given notice to do so. Therefore, in the absence of any evidence from the landlord I find that the tenant relayed on the verbal agreement she had with the landlord that if the property was sold the landlord would give the tenant three months notice of compensation equivalent to three months rent. With this information the tenant agreed to rent the property. As the property was sold before the tenant moved in this does not mitigate the landlords' responsibility to uphold this verbal agreement with the tenant. Section 16 of the *Residential Tenancy Act* states:

Start of rights and obligations under tenancy agreement

- 16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Consequently, I find in favour of the tenants application for compensation of **\$4,200.00** as the landlord did not give the tenant notice to end the tenancy as agreed when the property was sold and did not compensate her with three months' rent in lieu of any notice period as agreed between them pursuant to section 67 of the *Act*.

As the tenant has been successful with her claim I find she is also entitled to recover the cost of **\$50.00** paid to file her application. A Monetary Order has been issued to the tenant for **\$4,250.00**.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$4,250.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.



Dispute Resolution Services

Page: 4

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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: January 27, 2010.

Dispute Resolution Officer