

Decision

Dispute Codes:

MNDC

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Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Act. The tenant was also seeking the equivalent of two months rent under section 51(2). This hearing also dealt with a cross application by the landlord seeking a monetary order for damage and losses caused by the tenant. Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord ended the tenancy for landlord's use and if so:

- Was the two-month notice for Landlord Use issued, served and acted upon in compliance with the Act ? Were steps taken by the landlord to accomplish the stated purpose given for ending the tenancy under section 49 within a reasonable period after the effective date of the notice?
- Whether or not the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination depends on answers to the following questions:
 1. Has the landlord submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord?
 2. Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing that the damage was caused by the tenant and by verifying that the amount being claimed is justified?

The burden of proof is on the tenant in regards to proving that the Landlord failed to utilize the rental unit for the purpose stated on the Notice.

The burden of proof is on the landlord to establish that the landlord is owed monetary compensation from the tenant for damages or loss caused by the tenant .

Background and Evidence: Tenant's Application

The parties agreed that the tenancy began in November 2007 but this landlord had since purchased the home from the original landlord. The current landlord evidently issued a letter ending the tenancy for landlord's use, purportedly to allow the tenant's grandparents to move into the unit. Despite the noncompliant notice, the tenant accepted the end of the tenancy and vacated the unit on May 1, 2010.

The tenant testified that after the tenant moved out, advertisements for the rental of their former unit were discovered and it became evident that the landlord had not moved a close family member into the unit. The tenant is therefore seeking the equivalent of double the monthly rent as compensation for the landlord's failure to utilize the rental unit for the purpose stated on the Notice under section 51(2)Act.

The landlord did not dispute that the rental unit was not occupied by a close family member but stated that there was a good faith intention to do so. The landlord also stated that some of the space was used to store the landlord's possessions

.Analysis: Tenant's Claims

Section 49(3) of the Act provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. This was the stated purpose for the use of the unit and the reason given for ending the tenancy.

Section 51(2) of the Act states that in addition to the amount payable under section 51(1), the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if 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 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.

In this instance the landlord's stated intent on the notice was to move a close family member into the unit and the tenant accepted the termination of the tenancy without dispute and moved out.

I find that the issue of whether or not there was bad faith on the part of the landlord is not relevant being that tenant did not dispute the Notice based on alleged bad faith intent by the landlord and acted in compliance with the Notice.

However it is relevant that, based on evidence from both parties, the unit was then not used for the stated purpose given on the Notice. When this happens, section 51 of the Act imposes a requirement that the landlord pay a tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement under the following circumstances:

- (a) If 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
- (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.

In addition to the above, even if the landlord's grandparents intended to move into the unit and did so, this would not have fulfilled the criteria to end the tenancy under section 49(3) because the definition of "*close family member*" under section 49(1) means, in relation to an individual, (a) the individual's father, mother, spouse or child, or; (b) the father, mother or child of that individual's spouse. Moreover, the Notice itself would also be invalid due to the landlord's failure to comply with section 52 of the Act.

In any case, I find that the landlord gave notice to use the unit for a close family member and the tenant relinquished the suite. I find that the landlord was at liberty to change its plans as circumstance dictated. However, the provision requiring 2 months compensation still applies regardless of any other compelling factors that prevail. Accordingly I find that the landlord must compensate the tenant in the amount of \$1,900.00 representing double the monthly rent of \$950.00.

Landlord's Application: Background and Evidence

The landlord testified that after the tenant vacated the unit, the tenant left the unit in need of cleaning and refurbishment including changing the locks and garbage removal for which the landlord is claiming compensation. The total compensation claimed by the landlord was \$412.65.

The landlord testified that submitted into evidence a written statement and some receipts and records. According to the landlord the cost of cleaning was \$159.00 and this was necessary because the unit was not left reasonably clean. The landlord submitted a copy of a cheque to an individual for the above amount with the notation

“cleaning service”. There was no move in or move-out condition inspection report in evidence.

The tenant disputed the claim and stated that the unit was left reasonably clean and certainly in the same state as when they moved in. The tenant had submitted written statements from individuals who assisted in the cleaning.

The landlord was also claiming compensation for the cost of new locks and submitted into evidence an invoice for a service call to change the lock. The landlord testified that this was necessary because the tenant had only returned one of the two keys they were issued. The bill was for \$110.25.

The tenant disagreed that this charge was the responsibility of the tenant to fund.

The landlord was also claiming haulage fees to take some items to the landfill which the landlord testified was necessary as the tenant had left furniture in the unit and garbage such as boxes, magazines and paint in the storage area. The costs included \$45.00 for gas and \$98.40 for dump fees. The landlord provided a receipt for gas purchase and a bank statement showing the withdrawal of funds to pay the landfill site.

The tenant disputed the claim and testified that some furniture under the original tenancy agreement, they were required to return certain furniture items to the landlord and were not permitted to take them when they left, except for two items that had apparently been purchased from the previous landlord. The tenant had submitted into evidence a copy of an addendum to the tenancy agreement that specified which items must remain. The tenant pointed out that they left less items on site than the number listed. In addition, according to the tenant, all of the other things left in the storage area actually belonged to the previous landlord who had placed them there.

Analysis: Landlord's Claims

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that, in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenant.

I find that there was no move-in inspection report as required under sections 23 and 35 of the Act and the monetary claims were disputed by the respondent. I accept the tenant's testimony that the property was not in pristine condition at the time the tenant began to rent it and that the tenant had complied with section 32 of the Act by leaving the unit in a reasonably clean state. Given the above, the portion of the landlord's application claiming \$159.00 for cleaning is dismissed.

In regards to the claim for the cost of changing the locks, I find that under section 25(1) At the request of a tenant at the start of a new tenancy, the landlord must (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and (b) pay all costs associated with the changes under paragraph (a). I find that the tenant did return one of the keys and being that the landlord was concerned about the tenant accessing the unit, the locks were changed. Given the above I find that the portion of the landlord's application for \$110.25 for rekeying the locks must be dismissed.

In regards to the landlord's claim for the cost of hauling the items left in the unit, I find that the landlord did not sufficiently prove that these were left by the tenant in violation of the Act or agreement. Accordingly, this portion of the landlord's application is dismissed.

Conclusion

Based on the testimony and evidence, I find that the tenant is entitled to compensation in the amount of \$1950.00, comprised of \$1,900.00 representing the equivalent of two months rent under section 51(2) of the Act and \$50.00 for the cost filing this application and I hereby issue a monetary order in the amount of \$1,950.00 in favour of the tenant.

This Order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: November 2010.

Dispute Resolution Officer