



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC

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.

Service of the hearing documents, by the Tenant to the Landlord, was done by the Tenant's witness, in person at the Landlord's residence on November 11, 2010 at 4:25 p.m. The Agent confirmed receipt of the hearing documents and evidence from the Tenant.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

At the outset of the hearing the Landlord requested that his sister, the Agent, provide testimony on his behalf because he was ill. He stated his sister is part owner of the rental property.

The Tenant stated that she never dealt with the Landlord's sister for any tenancy issue and was never informed that she was a part owner of the property.

The Tenant's witness had just been woken up to attend the hearing and could only confirm that he had conducted the service of documents to the Landlords on behalf of the Tenant.

I heard undisputed testimony that the Landlords, as named in this dispute, and the Tenant entered into a written month to month tenancy agreement effective February 1, 2008. Rent was payable on the first of each month in the amount of \$650.00 and the Tenant paid \$325.00 on February 4, 2008 as the security deposit. The tenancy ended April 30, 2010 after the Landlords served the Tenant 2 Month Notice for Landlord's use of the property.

The Tenant testified the rental unit was in the basement of a fourplex. She was issued the 2 Month Notice in person on February 28, 2010 and vacated the property based on that Notice because she was told the Landlords' niece was moving into the rental unit. She received compensation equal to one month's rent for being served the Notice in accordance with the Act. She attended the rental unit on May 21, 2010, June 16, 2010 and July 12, 2010 to pick up her mail and each time she was there she confirmed the tenant who used to live above her was now residing in her old unit. Therefore, because the Landlord did not use the property as stated on the Notice, she is seeking compensation equal to two month's rent of \$1,300.00 (2 x \$650.00) plus \$200.00 for moving costs.

The Agent testified and confirmed the Tenant was served a 2 Month Notice to End Tenancy because her daughter's boyfriend and her daughter were planning to move into the Tenant's unit. They had been having difficulties with their daughter so in January 2010 they asked her to move out of their home when it was decided she would occupy the Tenant's unit with her boyfriend. Before they could occupy the basement unit her daughter broke up with her boyfriend and they decided to let her stay at home with them.

The Agent confirmed they did not use the Tenant's unit for their family member to move into and the female who was residing upstairs moved into the basement suite with her family while the male who had been residing in the upper unit all along, stayed there to reside with his family who had just arrived to Canada.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in 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; in this case the Tenant bears the burden of proof.

Section 51(2)(b) states that a tenant who receives a notice to end tenancy under section 49 of the *Act* is entitled to receive additional compensation if 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The evidence supports the Tenant was issued a Notice to End Tenancy under section 49 of the *Act* and the unit was re-rent to another tenant. Therefore, in accordance with section 51(2)(b) I approve the Tenant's claim of compensation equal to two month's rent of **\$1,300.00** (2 x \$650.00).

The Tenant is seeking \$200.00 in moving costs for having to move based on a Notice to End Tenancy. The *Act* provides that a Tenant is entitled to compensation equal to one month's rent as compensation for being issued a Notice under section 49 of the *Act* and having to move. The *Act* does not provide for a tenant to be reimbursed moving costs if the unit is not used for the stated purpose. Therefore I find there is insufficient evidence to support the Tenant's claim of \$200.00 and the claim is hereby dismissed without leave to reapply.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order for **\$1,300.00**. This Order must be served on the respondent Landlords and may be filed in 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: March 07, 2011.

Residential Tenancy Branch