



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and to recover the filing fee from the landlords for the cost of this application.

Service of the hearing documents, by the tenant to the landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on December 07, 2011. The tenant amended her application and sent a copy of this to the landlords by registered mail on January 31, 2012. Mail receipt numbers were provided in the tenant's documentary evidence. The landlords are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

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

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testifies that this month to month tenancy started on January 01, 2010. Rent for this unit was \$650.00 per month and was due on the first day of each month in advance.

The tenant testifies that the landlord served her with a Two Month Notice to End Tenancy on October 19, 2011. This Notice had an effective date of December 31, 2011 and informed the tenant that the rental unit will be occupied by the landlord or the landlords spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse. The tenant testifies that on November 14, 2011 the tenant gave the landlord a 10 Day Notice to move from the rental unit and the tenancy ended on November 30, 2011.

The tenant testifies that the landlord and his nephew attended the walk through inspection of the unit at the end of the tenancy and during that time the landlords' nephew informed the tenant that he would be painting the unit and changing the carpets because he and his fiancé would be moving into the rental unit. The tenant testifies that the landlord and his wife are older and no longer have parents living and do not have any children.

The tenant testifies that the landlord asked the tenant to return the next day and he would return the tenants security deposit. The tenant testifies that when she returned the next day the landlord did return her security deposit but refused to give the tenant her compensation for the Two Months Notice equivalent to one month's rent.

The tenant testifies that later in January, 2012 the tenants cousin went to the rental unit and found the landlords nephew and his fiancé had indeed moved into the unit.

The tenant calls her first witness. This witness testifies that she was present during the move out inspection and the landlords' nephew told them that he would be painting the unit and changing the carpets because he and his fiancé would be moving into the unit. This witness testifies that the landlords' nephew confirmed this several times during the conversation.

The tenant calls her second witness who testifies that she went to the tenants unit on January 17, 2012 as she did not know at the time that the tenant who is her cousin had moved out. The witness states that a man answered the door and when she asked for her cousin he said his name was [the name of the landlords' nephew] and confirmed that he now lived in the unit with his fiancé.

The tenant testifies that due to this additional information she has amended her application to seek compensation equivalent to two months' rent as the rental unit was not used as specified on the Two Month Notice to End Tenancy.

Analysis

I have carefully considered all the evidence before me, including the undisputed testimony of the tenant and both witnesses. With regards to the tenants claim for compensation for the Two Month Notice to End Tenancy; the landlord served the tenants with a Two Month Notice to End Tenancy on October 19, 2011 under s. 49 of the *Act* for landlords' use of the property. S. 51(1) of the *Act* states a tenant who receives a notice to end a tenancy under section 49 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. This compensation is to help tenants with moving costs from the unit. A tenant is still entitled to this compensation even if they move from the rental unit earlier then the date indicated on the Notice if they give the landlord 10 days notice that they will be moving out earlier.

In this matter it is my decision that the tenant did provide the landlords with 10 days notice to end the tenancy on a date earlier then the effective date of the Two Month Notice. I further find that the landlords failed to give the tenant compensation for the Two Month Notice and consequently the tenant is entitled to recover the sum of **\$650.00** which is the equivalent of one month's rent from the landlords pursuant to s. 67 of the *Act*.

With regards to the tenants claim for compensation due to the landlord not using the rental unit for the stated purpose given on the Two Month Notice; s. 51 of the *Act* states that if a landlord does not take steps to accomplish the stated purpose for ending the tenancy under s. 49 of the *Act* 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 the landlord or purchaser must pay the tenant an amount that is equivalent to double the monthly rent payable under the tenancy agreement.

I am satisfied with the testimony of the tenant and both witnesses that the landlords' nephew moved into the rental unit and was living there at least by January 17, 2012 when the tenant's second witness went to the rental unit. As a nephew is not considered to be a close family member as specified under the *Act* or on the Two Month Notice it is my decision that the tenant is entitled to compensation from the landlords equivalent to two months' rent to the sum of **\$1,300.00** pursuant to s. 67 of the *Act*.

As the tenant has been successful with this claim I find the tenant is also entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount:

Compensation for the Two Month Notice	\$650.00
Compensation because the rental unit was not used for its intended purpose	\$1,300.00
Filing fee	\$50.00

Total amount due to the tenant	\$2,000.00
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Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,000.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: February 16, 2012.

Residential Tenancy Branch