



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

On July 15, 2011, the Parties entered into a fixed term tenancy agreement with an occupancy date of September 1, 2011. The monthly rent was \$6,500.00 and the Tenant paid security and pet deposit totalling \$6,500.00. On August 30, 2011, the Landlord terminated the tenancy agreement. Pursuant to a decision dated September 29, 2011, the Landlord was found to be in breach of the agreement, the Tenant was found to be entitled to possession of the unit as of September 1, 2012 and an Order of Possession was granted to the Tenant for the unit, effective October 15, 2011. The Tenant was also found to be responsible for the payment of rent at the unit for the period October 15 to October 31, 2011. Finally, the Tenant was given leave to reapply for damages and losses arising from the Landlord's breach.

The Tenant states that as a result of the Landlord's breach, the Tenant experienced the damages or losses as set out below and the Landlord submitted an affidavit and made submissions on the Tenants claims as set out below.

- Moving and storage costs of \$5,869.60 for moving the household items to storage and then to the unit. The Tenant supplied a copy of an email from the moving and storage company that notes that the original estimate for the single move was \$5,740.00 and the actual cost was \$11,636.60. No invoice was provided detailing the costs of the move and the costs of the storage. The Landlord submits that the amount claimed is excessive and based on the Landlord's research should more reasonably be \$2,359.40. Furthermore, the Landlord submits that the Tenant should have mitigated the moving costs by rescheduling a move. The Tenant submits that the amount suggested by the Landlord is not based on moving and storage costs for a 5,000 square foot home but is based on smaller one or two bedroom units.
- Alternate accommodate costs of \$6,800.00. The Landlord does not dispute this amount.
- Legal costs of \$19, 622.29. The Tenant submits that legal counsel was necessary as the Landlord raised complex legal issues, had retained legal counsel, and had indicated that a judicial review of the decision would be sought. The Landlord submits that the Tenant is a lawyer and has the requisite knowledge and understanding of the issues, while the Landlord is unsophisticated with limited use of English. The Landlord submits that if the Tenant is found to be entitled to recover legal fees, then those fees would more reasonably be set at \$7,820.00.
- Non-Pecuniary damages of \$10,000.00. The Tenant provided an affidavit setting out the particulars of this claim and submits that stress and anxiety were suffered by him and family members over the uncertainty of living accommodation. The Tenant states that no physical problems arose as a result of the stress and anxiety. The Landlord submits that because the Tenant is sophisticated, the

claim in relation to stress and anxiety is exaggerated and that no medical or other evidence was provided to substantiate the claim.

Although the amounts claimed above exceed \$25,000.00, the Tenant waives any claim in excess of \$25,000.00.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that costs for the damage or loss have been incurred or established and that steps were taken to mitigate or minimize the loss or damage. Given the earlier Decision that found that the Landlord had breached the tenancy agreement, accepting that this breach caused the Tenant to suffer losses and considering the email as corroboration of the costs incurred by the Tenant to for moving and storage as a result of the breach, I find that the Tenant has substantiated an entitlement to **\$5,869.60** for moving and storage costs. Based on the undisputed evidence of accommodation costs, I find that the Tenant has substantiated an entitlement to **\$6,800.00**.

Non-pecuniary damages are measured by the wronged person's suffering and must be sufficiently significant in depth or duration or both, that they represent a significant influence on the wronged person's life. Accepting that it would be reasonable to expect that the Landlord's refusal to provide the unit to the Tenant would create stress and anxiety, particularly over the uncertainty in relation to living accommodations, I find that the Tenant is entitled to an award of non-pecuniary damages. Given however that no evidence was provided that this stress caused any loss of work, medical problems or other significant effects, I find that the Tenant is only entitled to reasonable compensation in the amount of **\$5,000.00**.

As the only fee subject to recovery under the Act is the filing fee, I dismiss the Tenant's claim for legal costs. As the Tenant's claim has been found to have merit, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$17,769.60.**

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$17,769.60.** If necessary, this order may be filed in the Small Claims 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: April 25, 2012.

Residential Tenancy Branch