



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This is an application filed by the tenant for a monetary claim for money owed or compensation for damage or loss under the Act, Regulations or Tenancy Agreement and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant states that after complying with a 2 month notice to end tenancy issued for landlords use dated May 16, 2013, the tenant vacated the rental unit on July 31, 2013. The tenant states that it was discovered that the landlord was re-renting the unit as shown by photographs taken between August 27, 2013 and September 5, 2013. The tenant has submitted copies of the original 2 month notice to end tenancy dated May 16, 2013, photographs of the rental property with a "For Rent" sign showing the landlord's telephone numbers and a copy of the original dispute resolution hearing decision dated June 25, 2013 regarding the 2 month notice and the circumstances at the time. The tenant states that he found out that the landlord currently has a new rental tenant in the unit. The landlord through his translator made no comment. The landlord did not dispute the tenant's claim. The tenant states that monthly rent was \$900.00.

The tenant seeks a monetary claim of \$1,800.00 equal to two months rent (\$900.00 each month), \$160.00 for the cost of gas for moving and \$10.00 for the cost of registered mail service.

Analysis

I accept the undisputed evidence of the tenant and find that the tenant has established grounds for compensation under Section 51 of the Act which states,

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) 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,**

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find that as there is no evidence to dispute the tenant's claim and that the landlord failed to use the rental unit for the stated purpose, the tenant has established a claim for

compensation under section 51 of the Act. The tenant has provided undisputed testimony that he complied with the 2 month notice to end tenancy issued for landlords use and has provided photographs that show that the landlord posted a "for rent" sign between August 27, 2013 to September 5, 2013 advertising the unit for rent. The landlord has established a claim for \$1,800.00.

As for the tenant's claim for \$160.00 for the cost of gas for moving has not been established. The tenant has failed to provide any evidence to show that the landlord would have been responsible for costs in moving after the tenancy ended. This portion of the tenant's claim is dismissed.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (registered mail) is dismissed.

The tenant has established a total monetary claim of \$1,800.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for \$1,850.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$1,850.00.

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: July 25, 2014

Residential Tenancy Branch

