



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Specifically, the tenant is seeking compensation in the amount of two month's rent due to the landlord failing to comply with the reason provided in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 30, 2015 (the "2 Month Notice"). The tenant is also seeking compensation for the cost of moving fees due to the loss of quiet enjoyment.

The tenant, an agent for the tenant (the "agent") and a witness for the tenant attended the teleconference hearing. The tenant, agent and witness gave affirmed testimony. During the hearing the tenant presented her evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by personal service with a witness on January 16, 2016 at approximately 6:00 p.m. which was witnessed by Y.I. and the landlord accepted the entire package at the landlord's front door. The tenant stated that the amendment to the tenant's Application was served personally on July 6, 2016 at approximately 3:00 p.m. and was witnessed by witness H.S. who provided witness testimony during the hearing. Witness H.S. stated under oath that he witnessed the tenant serve a package on the landlord between 3:00 p.m. and 4:00 p.m. in the afternoon a couple months ago and that the wife of the landlord accepted the package and that she lived with the landlord and that her children were also present at the time the tenant's spouse who lives with the landlord. Based on the above and without any evidence to prove to the contrary, I

accept that the landlord was served in accordance with the *Act* as claimed by the tenant above.

Issue to be Decided

- Is the tenant entitled to any monetary compensation under the *Act*, and if so, in what amount?

Background and Evidence

The tenant provided a copy of the written tenancy agreement in evidence. The tenancy began on June 1, 2015 and ended on January 21, 2016 when the tenant vacated the rental unit after accepting the 2 Month Notice served by the landlord. Monthly rent during the tenancy was \$700.00 per month and due on the first day of each month.

The tenant's monetary claim reads as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Double monthly rent for landlord failing to comply with reason stated in 2 Month Notice (\$700.00 X 2)	\$1,400.00
2. Moving fees for loss of quiet enjoyment	\$325.50
TOTAL	\$1,725.00

Regarding item 1, the tenant testified that the landlord did eventually pay the tenant one month of compensation in the amount of \$700.00 for having issued the tenant a 2 Month Notice dated December 30, 2015 and with an effective vacancy date of February 28, 2016. The 2 Month Notice lists the reason to end the tenancy as:

"The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

[reproduced as written]

The tenant submitted colour photos in evidence which the tenant stated supports that the rental unit was re-rented to a new tenant within three months of the tenant vacating the rental unit contrary to the reason stated on the 2 Month Notice. One colour photo

reads “FOR RENT BASEMENT” and the number matches the contact number of the landlord as provided by the landlord on the 2 Month Notice. The tenant stated that the photo was taken in February 2016. The next colour photo shows the rental unit with lights on and the new female adult tenant answering the door. The tenant stated that on May 4, 2016 she knocked on the new tenant’s door (the “new renter”) and was invited inside by the new renter. The tenant stated that she took photos of the new renter and her children and confirmed that the new renter is not related to the landlord or the landlord’s spouse and is from Africa. The landlord is from India. All photos were submitted in evidence.

The tenant also testified that the neighbouring tenant who lived next to her during the tenancy (the “neighbour tenant”) was residing in the rental unit next to her before the Applicant tenant moved into the rental unit on June 1, 2015 and that the neighbour tenant remains a neighbour tenant to the new renter.

Regarding item 2, this item was a claim by the tenant for \$325.50 for moving costs which was dismissed during the hearing as the tenant did not dispute the 2 Month Notice and has no remedy under the *Act* to now seek loss of quiet enjoyment for having to move. In other words, the remedy for the tenant was to dispute the 2 Month Notice which she failed to do. The tenant accepted the 2 Month Notice and moved out of the rental unit based on the 2 Month Notice.

Analysis

Based on the undisputed documentary evidence and the unopposed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

As the landlord was found to be served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the landlord.

Item 1 - As a result of the unopposed Application and taking into account the evidence presented by the tenant, which I find to be compelling and in support of item 1, I find the tenant is entitled to double the monthly rent of \$700.00 in the total amount of **\$1,400.00**. Section 51 of the *Act* applies and states:

(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.

[my emphasis added]

I am satisfied that there is sufficient evidence before me to support that the landlord re-rented the rental unit to a new tenant within six months of a reasonable time after the effective vacancy date of the 2 Month Notice and that the new tenant is not related to the landlord or the landlord's spouse contrary to the reason as indicated in the 2 Month Notice by the landlord.

Item 2- As mentioned above, item 2 is **dismissed without leave to reapply** due to the tenant failing to meet the burden of proof as the tenant has already accepted the 2 Month Notice and failed to dispute the 2 Month Notice.

The tenant has established a total monetary claim of **\$1,400.00**. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$1,400.00 owing by the landlord to the tenant as provided for under section 51(2) of the *Act*.

Conclusion

A majority of the tenant's application is successful. The tenant has established a total monetary claim of \$1,400.00 as indicated above. The tenant has been granted a monetary order under section 67 of the *Act* in the amount of \$1,400.00. 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 final and binding on the parties, unless otherwise provided under the *Act*, and 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: August 22, 2016

Residential Tenancy Branch