



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on January 8, 2016. The Tenant filed seeking a Monetary Order for: money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; for other reasons; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by two Landlords, the Tenant, and the Tenant's Assistant. The application for Dispute Resolution listed one Landlord, the owner. The Landlord's Agent, the second landlord who was in attendance at the hearing, conducted the majority of the Landlord's business in relation to this tenancy. Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa, except where the context indicates otherwise.

The Landlords and Tenant gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant affirmed that she served the Landlord with copies of the same documents and digital evidence that she had served the Residential Tenancy Branch (RTB). The Landlord acknowledged receipt of these documents; confirmed that they could view and/or hear the digital evidence; and no issues regarding service or receipt were raised. As such, I accepted the Tenant's relevant submissions as evidence for these proceedings.

The Landlords affirmed that they served the Tenant with copies of the same documents that they had served the RTB; however, they did not serve the Tenant with copies of their digital evidence. The Tenant acknowledged receipt of the documents and no issues regarding service or receipt of the printed documents were raised. As such, I accepted the Landlords' documentary submissions as evidence for these proceedings.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added by underlining and bold text].

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. Therefore, as the Landlords' digital evidence was not served upon the Tenant in accordance with Rule of Procedure 3.15, I declined to consider that digital evidence. I did however; consider the Landlords' relevant documentary evidence and their oral testimony.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Has the Tenant proven entitlement to compensation relating to a 2 Month Notice to end tenancy?
- 2) Is the Tenant entitled to reimbursement of the strata move out fee?

Background and Evidence

The Tenant began occupying the rental unit in approximately August 2005. Rent of \$770.00 was payable on or before the first of each month and was subsequently increased to \$866.10 per month. In August 2005 the Tenant paid a security deposit of \$385.00.

On February 26, 2015 the Tenant was served a 2 Month Notice to end tenancy (2 Month Notice) for landlord's use of property. The 2 month Notice listed an effective date of April 30, 2015 and the reasons for issuing the Notice was "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". The Tenant vacated the rental property as of April 15, 2015.

The Tenant submitted evidence that neither the Landlord nor the Landlord's family members occupied the rental property for a full 6 months after the effective date of the 2 Month Notice. She asserted that, based on her knowledge, the rental unit remained unoccupied from April 15, 2015 to January 14, 2016.

The Tenant argued the rental unit was not occupied for the reasons she was evicted. As a result she was seeking \$1,732.20 compensation which is an amount equal to two month's rent (2 x \$866.10); reimbursement of the \$50.00 strata move out fee; and the \$50.00 filing fee.

The Landlords testified and confirmed they served the Tenant the 2 Month Notice as described above. They stated that the Landlord (owner) had originally planned to complete renovations on the rental unit prior to moving in. The Landlords argued the Tenant had knowledge that the Landlord was not intending to move into the unit right away as he would be conducting repairs such as reinstalling the cupboard doors and removing the carpet.

The Landlords submitted evidence that the rental unit has not been occupied since the Tenant vacated on April 15, 2015 and continues to be vacant as of the date of this hearing. They asserted that they had originally intended for the Landlord to move into the rental unit once he completed renovations. However, due to: the renovations growing into enormous things; their family circumstances; the Landlord's other apartment fire; and the Landlord's medical condition; they stated they are not comfortable with him moving into the rental unit until such time as they feel it would be safe for him to do so.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 51(2) of the *Act* stipulates that in addition to the amount payable under subsection (1), if 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 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.

The undisputed evidence in this matter was the rental unit has not been used for the stated reasons listed on the 2 Month Notice to end tenancy. The rental unit was not occupied by the Landlord or his family members for the period of a full 6 months after the Tenant had vacated the rental unit. The evidence was the Landlord never intended on immediately occupying the rental unit. Rather, the Landlord initially intended on conducting renovations first. Notwithstanding the Landlord's medical and family circumstances, the rental unit has remained vacant for the past 16 months.

As per the foregoing, I accept that rental unit has not been used for the stated purpose for ending the tenancy under section 49 of the *Act* within six months of ending the tenancy. Accordingly, I grant the Tenant's application in the amount of **\$1,732.20** (2 x \$866.10 monthly rent), pursuant to section 67 of the *Act*.

In regards to the Tenant's request to be reimbursed the \$50.00 Strata move out fee, the RTB dispute resolution process allows an Applicant to claim for compensation or loss as the result of the other party's breach of *Act*. Costs incurred due to terms of a tenancy agreement or a Strata agreement is not a breach of the *Act*. In this case the Tenant moved out and was required to pay \$50.00 to the Strata as a move out fee; regardless of the reason why she moved out. The aforementioned does not constitute a breach of the *Act*. Accordingly, I dismiss the Tenant's claim of \$50.00 for the Strata move out fee, without leave to reapply.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

I hereby order the Landlord to pay the Tenant \$1,782.20 forthwith (\$1,732.00 + \$50.00). In the event the Landlord does not comply with that order, the Tenant has been issued a

Monetary Order for **\$1,782.20** which may be enforced through Small Claims Court after service upon the Landlord.

Conclusion

The Tenant was primarily successful with their application and was awarded monetary compensation in the amount of **\$1,782.20**.

This decision is final, legally binding, 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 24, 2016

Residential Tenancy Branch