



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

On May 3, 2016, the Tenant submitted an Application for Dispute Resolution asking the Landlord comply with the Act, regulations or tenancy agreement; for a monetary order for money owed or compensation for damage or loss under the Act, the regulations, or a tenancy agreement, and to recover the filing fee for the Application. On September 1, 2016, the Tenant amended her Application to increase her monetary claim and provided a Monetary Worksheet to clarify her monetary claim.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed they received the evidence from the other party.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The parties participated in a previous hearing on July 13, 2015. The parties settled their dispute and the Arbitrator recorded the settlement as a Decision dated July 13, 2015. The terms of the settlement are as follows:

- 1) The tenant agreed to vacate the rental unit on or before October 31, 2015 at 1:00 pm.
- 2) The landlord agreed that the tenant will pay rent as follows until the end of the tenancy in the amounts as follows;

- August 1 ,2015: \$1074.00
 - September 1, 2015: \$1074.00
 - October, 2015: no rent to be paid by tenant for this month pursuant to section 51 of the Act.
- 3) After condition inspection and any agreed deductions, the security deposit will be returned to the tenant.
- a) The security deposit refund amount will include an additional \$50.00 paid by the landlord to the tenant to compensate the tenant in recovering the filing fee for this application.
- 4) These terms comprise the full and final settlement of all aspects of this dispute for both parties.

Issues to be Decided

- Is the Tenant entitled to compensation from the Landlord?
- Should the Landlord be ordered to comply with the Act, regulations or tenancy agreement?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began in December 2003. Both parties agree that the tenancy was a month to month tenancy when it ended on October 31, 2015. The parties testified that rent in the amount of \$1,074.00 was payable on the first of each month and that the Tenant paid the Landlord a \$400.00 security deposit.

The Tenant testified that the Landlord ended the tenancy in bad faith. She submits that the Landlord ended the tenancy for the reason of performing major renovations. She submits that within a couple of weeks after she moved out there were new occupants living in the unit. She submits that the Landlord did not allow her to stay in the unit while the renovations were completed. The Tenant submits that the Landlord wanted her out so the Landlord could raise the rent. The Tenant testified that she agreed to the settlement because she figured her tenancy would end anyway, and she made plans to move elsewhere.

The Tenant has provided documentary evidence from the new occupants of the rental unit that indicates the new occupants are paying \$1,650.00 per month rent.

The Tenant is claiming compensation in the amount of \$2,148.00 which is double the amount of the monthly rent that the Tenant was paying the Landlord.

The Tenant is also claiming compensation in the amount of \$3,670.00 which was determined by calculating the difference in the amount of monthly rent she is currently paying from the monthly amount she paid during her tenancy with the Landlord.

The Tenant is also claiming compensation for moving costs. The Tenant is asking to be reimbursed for the fuel costs for moving.

In response, the Landlord testified that the renovations to the rental unit began on November 4, 2015, and were completed on November 21, 2015. The Landlord testified that the Landlord renovated by removing and replacing carpets, installing laminate flooring, fixing the deck; replacing toilets; tiling the bathroom; fixing the plumbing and fixing the showers.

The Landlord provided documentary evidence of a work permit for the dispute address and also provided color photographs and receipts for the work that was completed to the unit.

The Landlord testified that the rental unit was rented to a new Tenant on November 27, 2015. The Landlord testified that the new Tenants are paying \$1,650.00 per month rent which is comprised of \$1,250.00 for rent; \$250.00 for utilities; and \$150.00 as a security deposit installment.

Section 51 (1) of the Act states that 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.

Section 51 (2) of the Act states that 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.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant's submissions surrounding "bad faith"; whether the rental unit was required to be vacant; and the validity of the 2 Month Notice To End Tenancy should have been made at the hearing where she disputed the 2 Month Notice. I find that the Tenant is attempting to re-argue the issues surrounding occupancy and "bad faith" that she had an opportunity to make at the hearing where she disputed the 2 month Notice. In that hearing, the Tenant entered into a settlement agreement and agreed to move out of the rental unit and was compensated pursuant to section 51(1) of the Act with one month's rent. The tenancy is over and the Tenant cannot re-argue the validity of the Notice in this hearing.

The matter I need to determine is whether the Landlord complied with the requirements of section 51(2)(a) of the Act. I find that the Landlord started renovating the rental unit within four days of the Tenant moving out. I find that the Landlord took steps to have the rental unit renovated within a reasonable amount of time pursuant to section 51 (2)(a) of the Act. The Landlord completed the renovations on November 21, 2015, and re-rented the unit to a new Tenant on November 27, 2016.

I find that the Landlord was entitled to re-rent the unit as soon as the renovations were complete. There is no time requirement in these circumstances that prevents the Landlord from renting out the unit once the renovations are complete. I find that the Landlord has not breached section 51 (2)(a) of the Act, and is not required to pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. The Tenant's claim for \$2,148.00 is dismissed.

As I have found that the Landlord has not breached section 51 of the Act, the Tenant's claims for compensation in the amount of \$3,670.00 for the difference in rent, and compensation for fuel costs for moving are also dismissed.

I note that the Act no longer entitles a Tenant to claim compensation for the difference in rent, or moving costs, when a Landlord has not complied with the obligations surrounding a 2 Month Notice to End Tenancy.

As the Tenant was not successful in her application, I decline an award to recover the application fee for dispute resolution.

Conclusion

The Tenant has failed to establish that the Landlord has breached the Act, the regulations or the tenancy agreement. The Tenant's application is dismissed.

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: September 20, 2016

Residential Tenancy Branch