



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 to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on February 15, 2016. The Tenants filed seeking a Monetary Order for: money owed or compensation for damage or loss under the *Act*, Regulation, and/or tenancy agreement and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by both Tenants. No one was in attendance on behalf of the Landlord. The Tenants provided testimony that the Landlord was served notice of this application, notice of this hearing, and copies of their evidence by registered mail on February 17, 2016. Canada Post tracking receipts were submitted into evidence.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) states that a document served by mail is deemed to have been received five days after it was mailed.

A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision. Based on the undisputed evidence of the Tenants, I find that the Landlord was deemed served notice of this application, hearing, and the Tenants’ evidence, on February 22, 2016, five days after they were mailed, pursuant to section 90(a) of the *Act*. . Therefore, I continued to hear the undisputed evidence of the Tenants, in absence of the Landlord.

Issue(s) to be Decided

Have the Tenants proven entitlement to monetary compensation relating to a 2 Month Notice to end tenancy?

Background and Evidence

The Tenants submitted evidence they entered into a written fixed term tenancy agreement which began on August 1, 2015 and was scheduled to switch to a month to month tenancy after July 31, 2015. Rent of \$2,200.00 was payable on the first of each month.

On June 10, 2015 the Tenants were served a 2 Month Notice to end tenancy (2 Month Notice) for landlord's use of property when it was posted to their door. The 2 month Notice listed an effective date of August 31, 2015. That Notice listed the following reason: "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 Tenants submitted evidence that on July 23, 2015 they left the Landlord a voicemail message indicating they would be vacating the rental unit 10 days later on August 3, 2015. The Tenants stated that when they missed the Landlord's call back they sent him a text message on July 24, 2015 confirming that they would be moving out of the unit earlier than the effective date. The Tenants vacated August 3, 2015 and returned the keys to the Landlord August 4, 2015 during the move out inspection.

The Tenants confirmed they did not pay rent for August 2015 as that was their compensation equal to one month's rent for being served the 2 Month Notice. They asserted that despite them giving the Landlord 10 day notice verbally and by text, they were of the opinion that they were entitled to \$1,916.13 from the Landlord, as payment for prorated compensation for the days of August 5 – 31, 2015 when they did not occupy the rental unit.

In addition, the Tenants were seeking \$4,400.00 compensation equal to two month's rent (2 x \$2,200.00) because they said the Landlord did not use the rental unit for the reason stated on the 2 Month Notice. The Tenants submitted evidence that the Landlord and his wife were both of Asian descent. They asserted the people who occupied the rental unit after they moved out, were Caucasian, and therefore, the new occupants were not close family members of the Landlord.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlords, who did not appear despite being properly served with notice of this proceeding, I accept the undisputed evidence as submitted by the Tenant.

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 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 67 of the Residential Tenancy *Act* states that 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 50(1) of the *Act* provides that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

52 of the *Act* stipulates that to be effective a notice to end tenancy issued by a tenant must be in writing; must have the effective date of the notice; and must be signed and dated by the tenant.

By their own submissions the Tenants did not serve the Landlord with written notice to end their tenancy prior to the effective date, as required by sections 50 and 52 of the *Act*. Therefore, I find pursuant to section 62 of the *Act*, the Tenants submitted insufficient evidence to prove entitlement to payment of compensation for the period of August 5 – 31, 2015. Accordingly, the claim for \$1,916.13 is dismissed, without leave to reapply.

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.

I accept the undisputed evidence that the rental unit was not occupied by the Landlord or the Landlord's close family members for the period of a full 6 months after the Tenants had vacated the rental unit. Furthermore, I accept that steps had not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act*. Accordingly, I grant the Tenants' application in the amount of **\$4,400.00** (2 x \$2,200.00 monthly rent), pursuant to section 67 of the *Act*.

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 Tenants have partially succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

I hereby order the Landlord to pay the Tenants \$4,500.00 forthwith (\$4,400.00 + \$100.00). In the event the Landlord does not comply with that order, the Tenants have been issued a Monetary Order for **\$4,500.00** which may be enforced through Small Claims Court after service upon the Landlord.

Conclusion

The Tenants were partially successful with their application and were awarded monetary compensation in the amount of **\$4,500.00**.

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: September 02, 2016

Residential Tenancy Branch