



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 by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant and his agent on April 6, 2016. The Tenant applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement, and to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary and digital evidence prior to the hearing. The Tenant removed his agent from the Application as his agent was not party to the dispute. There was no appearance for the Landlord during the 18 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents for this hearing by the Tenant.

The Tenant testified that he sent a copy of his Application and the Notice of Hearing documents to the Landlord’s service address which was the address the Landlord was residing at during the tenancy and was the address that the Landlord documented on the notice to end tenancy. The Tenant provided the Canada Post tracking number into oral evidence. This number is noted on the front page of this Decision. The Tenant testified that the Canada Post website shows that it was sent to the Landlord on April 11, 2016 and was received and signed for by the Landlord on April 12, 2016. Therefore, I accept the undisputed evidence of the Tenant and find that the Landlord was served on April 12, 2016 pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Tenant as follows.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation payable under Section 51(2) of the Act following the ending of the tenancy?

Background and Evidence

The Tenant testified this this tenancy for the basement of a rental home started on April 15, 2014. A written tenancy agreement was completed for a month to month tenancy. The agreement provided into evidence shows rent was payable by the Tenant in the amount of \$750.00 due on the first day of each month.

The Tenant testified that the Landlord ended the tenancy by serving him personally with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the " 2 Month Notice") on November 28, 2015. The 2 Month Notice had a vacancy date of January 31, 2016 and the reason indicated for ending the tenancy was because: "*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 testified that the Landlord and his wife lived in the upstairs portion of the rental home and the Landlord informed him that he himself was going to be moving into the basement suite, although his wife was going to continue to reside in the upstairs suite. The Tenant testified that the Landlord was ending his tenancy at an inconvenient time and as a result, the Tenant left earlier than the vacancy date on the 2 Month Notice, leaving on January 1, 2016. The Tenant confirmed that the Landlord returned his security deposit and paid him the one month compensation pursuant to Section 51(1) of the Act.

The Tenant testified that on April 4, 2016 he attended the basement rental unit in the morning to see if there was any residual mail for him. At this time, he saw an unknown male entering the basement suite. As a result, the Tenant started to video record the conversation he had with him. The Tenant provided a copy of the video on a DVD for this hearing. However, I was unable to view the video footage. The Tenant had provided a detailed written breakdown of the video which details the important parts of the conversation he had with this unknown male. As a result, I asked the Tenant to play the video over the telephone conference call so I could hear this evidence.

In the audio evidence, the unknown male continual acknowledges that he is receiving mail to the basement unit and states that he moved into the basement unit on March 29, 2016. The unknown male states that he paid the Landlord a security deposit and has a legal written tenancy agreement to rent the basement unit from the Landlord. The Tenant testified that the video shows the basement suite address to verify it is the rental unit and that the video also shows the Landlord's car parked on the driveway. The Tenant submits that the unknown male was a renter as he observed him entering the basement suite with his own key. As a result, the Tenant seeks compensation payable

to him under the Act because the Landlord failed to use the rental unit for the reason he had ended the Tenant's tenancy.

Analysis

I have carefully considered the undisputed evidence of the Tenant on the balance of probabilities in making a determination of the Tenant's monetary claim. Section 51(2) of the Act states:

51 (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.

[Reproduced as written]

Therefore, even if a landlord pays a tenant the one month's compensation after giving the Tenant a 2 Month Notice, a landlord is still liable to an additional two months of compensation if the landlord does not use the property for the reason indicated on that 2 Month Notice.

I find the Tenant's oral testimony and his written account of the April 4, 2016 conversation he had with unknown male outside the basement rental unit is consistent with the video footage which the Tenant played to me during the telephone conference call. Therefore, I accept the audio evidence in the absence of being able to see the video footage, that on the balance of probabilities the unknown male was a renter of the basement rental unit. I find the information the Tenant gleaned from this unknown male is consistent with the Tenant's submission that the rental unit was not occupied by the Landlord but was instead rented out to another renter shortly after the tenancy ended.

Section 51(2) of the Act provides for compensation when a landlord ends the tenancy with a 2 Month Notice and fails to use the rental unit for the purpose the tenancy was ended. Here, I find there is sufficient evidence to show the Landlord failed to use the

basement rental unit for his own use. Therefore, the Tenant's Application for two months compensation is granted in the amount of \$1,500.00

As the Tenant has been successful in this matter, I also award the Tenant the filing fee of \$100.00 pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is \$1,600.00.

The Tenant is issued with a Monetary Order which must be served on the Landlord. The Tenant may then file and enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment in accordance with the Tenant's written instructions. Copies of this order are attached to the Tenant's copy of this Decision. The Landlord may also be held liable for any costs associated with the enforcement of the Monetary Order.

Conclusion

The Landlord did not use the rental unit for the reason indicated on the 2 Month Notice which was used to end the tenancy. Therefore, the Landlord is ordered to pay the Tenant \$1,600.00 as compensation, inclusive of the filing fee.

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: October 04, 2016

Residential Tenancy Branch

