



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 as a result of the tenant's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenant indicate in their Application that they are requesting 2 month's rent in compensation as the landlord gave the notice ending the tenancy which was issued in bad faith.

The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant was given the opportunity to provide his evidence orally. A summary of the testimony 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 registered mail on October 26, 2016. The tenant provided a registered mail tracking number customer receipt in evidence and confirmed that the name and address on the registered mail package matched the name of the new owner of the property, L.C. (the "landlord") and the address for the landlord as supported by a copy of the title search also submitted in evidence dated October 20, 2016. According to the online registered mail tracking website, the landlord signed for and accepted the registered mail package on October 27, 2016. Based on the above, I find the landlord was served with the Application, Notice of Hearing and documentary evidence on October 27, 2016 which was the date the landlord signed for and accepted the registered mail package.

Issue to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of double the monthly rent pursuant to section 51(2) of the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2008 and reverted to a month to month tenancy after April 30, 2016. The landlord served

the tenant with the 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 17, 2016 (the "2 Month Notice") and had an effective vacancy date of June 30, 2016. The tenant stated that he complied with the 2 Month Notice and vacated the rental unit on June 30, 2016. The reason stated on the 2 Month Notice is listed as:

"All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

[Reproduced as written]

The tenant stated that he found the name of the purchaser (the "landlord") by performing a title search of the rental unit address, a copy of which was submitted in evidence dated October 20, 2016. The term "landlord" is defined in Part 1 of the *Act* and reads as follows:

"landlord", in relation to a rental unit, includes any of the following:

(a) **the owner of the rental unit**, the owner's agent or another person **who, on behalf of the landlord,**

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) **exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**

(b) the heirs, assigns, personal representatives **and successors in title to a person referred to in paragraph (a);**

[My emphasis added]

Therefore, based on the above and for the purpose of differentiating between the previous landlord who issued the 2 Month Notice and the purchaser of the rental unit and who maintains the title of the rental property, I will refer to the purchaser as the "landlord" and the previous landlord as "previous landlord" for clarity purposes. I find the landlord meets the definition of landlord under the *Act* as the landlord is the successor in title to the previous landlord who issued the 2 Month Notice based on a request in writing from the landlord and which I note was unopposed by the landlord as the landlord did not attend the hearing to dispute the tenant's Application or testimony.

The tenant referred to two ads from a popular online website where rental properties are listed. Based on the ads, and the undisputed testimony of the tenant the rental unit was advertised for \$1,900.00 per month and that although the rental home is a duplex, the ads says "both sides available" in the rental ad. The tenant stated that \$1,900.00 is significantly more than the \$1,135.00 per month that he was paying and that the ad was posted within four months of the effective date of the 2 Month Notice. The tenant also stated that the landlord posted a "For Rent" sign on the grass in front of the rental unit during this same time period.

The tenant is seeking compensation for double the monthly \$1,135.00 rent pursuant to section 51(2) of the *Act* as the rental unit was not used for the stated purpose of the 2 Month Notice in accordance with the *Act*.

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 under the *Act* to minimize the damage or loss.
- 5.

Section 51(2) of the *Act* applies and states:

(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]

Firstly I find this Application to be unopposed by the landlord (who is also the purchaser in this matter) as the landlord signed for and accepted the registered mail package and did not attend the hearing. Therefore, I fully accept the undisputed documentary evidence and testimony of the tenant and I find the landlord failed to comply with the reason as stated in the 2 Month Notice for a minimum of six months after the effective date of the 2 Month Notice. Therefore, I find the landlord L.C. caused the 2 Month Notice to be issued in bad faith as the landlord failed to use

the rental unit for the stated purpose for a minimum of six months as required by the *Act*. Therefore I find the landlord owes the tenant **\$2,270.00** which is double the \$1,135.00 monthly rent pursuant to section 51(2) of the *Act*.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

The tenant has established a total monetary claim of **\$2,370.00** as described above. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$2,370.00** accordingly.

Conclusion

The tenant's application is fully successful.

The landlord has failed to comply with the reason stated in the 2 Month Notice for at least six months from the effective date of the 2 Month Notice contrary to the *Act*. The tenant has met the burden of proof and has established a total monetary claim of \$2,370.00. The tenant has been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$2,370.00. 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: April 27, 2017

Residential Tenancy Branch