



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 2:10 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that he had served the landlord with his application for dispute resolution hearing package ("Application") and evidence by way of registered mail on February 10, 2017. As per the tenant's testimony and the written tenancy agreement, this tenancy was managed on behalf of the landlord by a property management company, and rent was paid to the property management company on behalf of the landlord. As this tenancy has now ended, the tenant found an alternative means of serving the landlord as he was not in possession of the landlord's contact information or mailing address. In the hearing the tenant explained at length how he had obtained the landlord's current mailing address by doing a land title search.

The tenant was successful in obtaining the landlord's mailing address, and was able to confirm receipt of his Application and evidence by the landlord at this address. The tenant provided the Canada Post tracking numbers, a copy of the recent land title certificate dated February 7, 2017, and confirmation from Canada Post that the packages were received and signed for by the landlord. Although the tenant did not serve the landlord in accordance with sections 88 and 89 of the *Act*, I find that the tenant has satisfied the need to demonstrate that the documents have been served to the landlord. On this basis, I find that I am able to make a determination under section 72(2)(c) of the *Act* that the tenant sufficiently served the landlord with his Application and evidence, and in accordance with section 90 of the *Act*, I find the landlord deemed served with the Application and evidence on February 15, 2017, five days after mailing.

The tenant testified during the hearing that he had moved out on August 31, 2016 pursuant to the 2 Month Notice to End Tenancy for Landlord Use ('2 Month Notice') served to him by the

landlord on July 22, 2016. In his application, the tenant is seeking financial compensation for the landlord's noncompliance with the *Act* as the tenant believes that the landlord did not use the home for the purpose indicated on the 2 Month Notice

At the beginning of the hearing the tenant applied to amend the landlord's name on the Application as he believed the name was spelled incorrectly on the written tenancy agreement and application. The tenant stated the landlord's name on the application was missing a letter, and he believed the correct spelling was on the recent land title document submitted in evidence. I find that the tenant's undisputed application for the name amendment was supported by proper documentation, and accordingly, the landlord's name was amended to reflect the landlord's name on the land title submitted by the tenant.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Background and Evidence

This month-to-month tenancy began on July 1, 2015. Monthly rent was set at \$1,525.00, payable in advance on the first of each month. The landlord held a \$762.50 security deposit, which was returned at the end of the tenancy.

The tenant testified to the following. The tenant moved out on August 31, 2016 as per a 2 Month Notice issued to him by the landlord on July 22, 2016. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse". A copy was included as part of the tenant's evidence.

The tenant is seeking compensation as he believes that the landlord did not use the home for the purpose indicated on the 2 Month Notice. The tenant's suspicions were raised after he had moved out, and noticed the unit listed for sale on the local online real estate listing service. The tenant confirmed this by contacting the listing agent by email, which was included in his evidence. In his email, dated February 6, 2017, the listing agent informed the tenant that "the seller decided not to sell anymore as they've rented it out". The tenant submitted that although the landlord is no longer selling his unit, he has found a new tenant, and did not move in as indicated on the 2 Month Notice.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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.

I have considered the undisputed testimony of the tenant as the landlord did not attend the hearing. I find that the tenant had provided sufficient evidence to support his belief that the landlord failed to comply with section 49(3) of the *Act*. The landlord's listing agent clearly stated that the landlord had re-rented the rental unit instead of occupying the rental unit as indicated on the 2 Month Notice. Accordingly, I find that the tenant is entitled to compensation equivalent to double the monthly rent of \$1,525.00, as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of \$3,050.00.

Conclusion

I issue a \$3,050.00 Monetary Order in favour of the tenant in compensation for the landlord's failure to comply with section 49(3) of the *Act*. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 6, 2017

Residential Tenancy Branch