



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:15 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:00 p.m. The tenant E.R. attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Tenant E.R. (the tenant) stated that she would be representing the interests of both tenants in this matter.

The tenant testified that they initially submitted an Application for Dispute Resolution (the Application) on April 25, 2017. The tenant testified that shortly after submitting the Application they realized the address that they had for the landlord was wrong. On April 28, 2017, the tenant submitted an Amendment to an Application for Dispute Resolution (the Amendment) to have the landlord's address corrected to match the service address for the landlord as indicated on the Two Month Notice.

The tenant testified that the Application, along with the Amendment and all supporting evidence was served to the landlord by way of registered mail on April 28, 2017. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find the landlord was deemed served with these documents on May 03, 2017, the fifth day after the registered mailing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave undisputed sworn testimony that this tenancy began on January 01, 2015, with a monthly rent of \$1,650.00 due on the first day of each month. The tenant testified that the monthly rent was increased to \$1,700.00 on January 01, 2016. The tenant testified that a security deposit of \$825.00 was paid to the landlord and that the landlord returned the security deposit to the tenants shortly after the tenancy ended.

A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice, dated February 26, 2016, with an effective date of April 30, 2016, was included in the tenant's evidence.

A copy of the "Buyers Notice to Seller for Vacant Possession" dated February 22, 2016, was provided in the tenant's evidence.

Copies of e-mail exchanges between the tenants and the landlord's agent regarding the Two Month Notice, the tenants giving notice to end the tenancy, the return of the security deposit and inquiries regarding the compensation for the Two Month Notice were also included in the tenant's evidence.

The tenant gave undisputed sworn testimony that the landlord issued a Two Month Notice to the tenants on February 26, 2016, which the tenants accepted. The tenant testified that they gave notice to the landlord's agent on March 20, 2016, to end the tenancy on April 01, 2016, at which time they gave possession of the unit to the landlord's agent.

The tenant testified that she sent various e-mails to the landlord's agent regarding their compensation for the Two Month Notice. The tenant testified that the landlord's agent responded to them that they had left multiple messages for the landlord, who was not responding to the agent's messages. The tenant testified that the landlord's agent eventually informed them that the landlord did not want to pay the compensation and the agent advised the tenants that they would have to pursue the compensation through the Residential Tenancy Branch.

The tenants are requesting a monetary award in the amount of \$1,700.00, equivalent to one month's rent pursuant to sections 49 and 51(1) of the *Act*, and to recover the \$100.00 filing fee.

Analysis

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 49 of the *Act* establishes that a landlord may issue a Two Month Notice upon the sale of the property and when the purchaser indicates in writing that the purchaser intends on occupying the rental unit. Section 50 (1) (a) of the *Act* states that a tenant may end a tenancy early by 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. Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end tenancy under section 49 of the *Act* 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.

I have reviewed all documentary evidence and undisputed sworn testimony and I find that the tenants gave the landlord sufficient notice to end the tenancy effective as of April 01, 2016, in accordance with section 50 (1) (a) of the *Act*. I further find that the landlord was obligated to compensate the tenants in the amount of \$1,700.00, the equivalent of one month's rent payable under the tenancy agreement, pursuant to section 49 and 50 (1) of the *Act*.

Based on the evidence and undisputed sworn testimony of the tenant, I find that the landlord has not compensated the tenants as required under section 49 and 50 (1) of

the *Act*. Therefore, I find the tenants are entitled to a monetary award in the amount of \$1,700.00, the equivalent of one month's rent payable under the tenancy agreement.

As the tenants are successful in this application, I find the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary order in the favour of the tenants in the amount of \$1,800.00 against the landlord as follows:

Item	Amount
One Month's Rent Compensation	\$1,700.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$1,800.00

The tenants are provided with this Order in the above terms and 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: September 21, 2017

Residential Tenancy Branch