



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC

Introduction

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

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- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentary evidence for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of two months' rent as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on November 5, 2016 for a 12 month term but ended on March 31, 2017. The monthly rent was \$1250.00.

The tenants gave the following testimony:

On February 2, 2017 the landlord served the tenant with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by May 1, 2017. The ground for the Notice was that the rental unit would be occupied by the landlord or the landlord's close family member. The tenants testified that they gave the landlord notice on March 20, 2017 that they would vacate on March 31, 2017. The tenant moved out of the rental unit on but later discovered that the landlord did not move into the rental unit; instead found a listing that the house was for sale as of April 29, 2017. The tenants submitted documents in support of their application, including a copy of the listing that shows the home has been advertised for rent. The tenants also seek \$112.83 for the cost of gas for moving and \$544.18 for moving costs.

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The landlord gave the following testimony:

The landlord testified she was intending to move in but due to unforeseen medical issues, she was unable to. The landlord testified that if it were not for her medical issues she was fully intending to move in.

Analysis

I address the tenants claim and my findings as follows.

Gas and U-Haul expense -The tenants accepted the notice to move out and did so willingly. In addition, the one month's rent compensation takes into account the costs of moving. Further, the cost of moving are costs the tenants would have incurred at the end of the fixed term tenancy. This was explained in detail to the tenants and advised them that they would not be granted this portion of their application; the tenants advised that they understood, accordingly; I dismiss this portion the tenants claim.

Two months compensation - Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

(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.

The applicants seek payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. In the landlords own testimony she acknowledges and concedes he did not act in accordance with what the basis of the notice stated. I accept the landlords' testimony that she fully intended to move into the unit had it not been for her health issues and that she meant no malice, however that does not relieve her of her responsibilities and obligations under the Act. Based on the above, the tenants have been successful in their application.

The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. I am satisfied that the tenant is entitled to $\$1250.00 \times 2 \text{ months} = \2500.00 plus the recovery of the \$100.00 filing fee for a total award of \$2600.00.

Conclusion

The tenants have established a claim for \$2600.00. I grant the tenant an order under section 67 for the balance due of \$2600.00. This order may be filed in the Small Claims 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: October 26, 2017

Residential Tenancy Branch