



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

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

The tenant applied 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 from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. At the end of the hearing, after the parties had given evidence the tenant's phone line cut out and he was dropped from the conference call hearing. No new evidence was provided by the landlord after the tenant exited the hearing.

As both parties were in attendance I confirmed service of the respective applications and evidentiary materials. Both parties confirmed they were in receipt of the other's application and evidence. Pursuant to sections 88 and 89 of the *Act* I find that the parties were served with the respective applications and evidence.

During the hearing the tenant applied to amend the monetary amount sought in his application. The tenant testified that there were arithmetic errors in his original application and the actual amount he is seeking is \$4,803.77. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find that corrected an arithmetic error can be reasonably anticipated I amend the tenant's application by increasing the monetary claim from \$3,575.00 to \$4,803.77.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed? Is either party entitled to recover the filing fee for their application from the other?

Background and Evidence

The parties agreed on the following facts. The tenant resided in the rental unit since 2009. The landlord purchased the rental property in January, 2016. The parties signed a tenancy agreement dated January 31, 2016 creating a fixed term tenancy beginning January 1, 2016 and ending on March 31, 2016. The tenancy agreement provides that at the end of the tenancy the tenant must vacate the rental unit. This clause is initialled by both parties. The agreement provides that the monthly rent is \$950.00 and the security deposit is \$500.00.

At the same time as the tenancy agreement was signed by the parties, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated January 25, 2016 which provides an end of tenancy date of April 1, 2016. The reason given on the 2 Month Notice is that the rental unit will be occupied by the landlord or a close family member. The tenant did not pay the landlord rent for the month of March, 2016.

The parties completed a move-out inspection at the end of the tenancy and completed a condition inspection report. The landlord gave the tenant the full security deposit amount of \$500.00. The landlord testified that the tenant did not pay the security deposit at the start of the tenancy nor was any security deposit transferred from the previous landlord. The tenant testified that he paid the security deposit to the original landlord of the property when he first moved into the rental unit.

The landlord testified that the tenancy ended in accordance with the fixed term tenancy and therefore the landlord was not obliged to give the tenant the equivalent of one month's rent compensation. The landlord also said that he paid the \$500.00 security deposit to the tenant despite there being no evidence that the tenant paid an initial security deposit to the previous landlords. The landlord therefore claims a monetary award of \$1,450.00 the equivalent of the rent for the month of March, 2016 and the return of the \$500.00 he paid to the tenant as a security deposit return.

The landlord testified that since the tenancy ended on April 1, 2016 he began a series of renovations to the rental unit. The landlord said that he did not move into the rental unit until the summer of 2017, on or about June, 2017. The landlord testified that the nature of the renovations prevented him from moving in earlier. The landlord said that the work involved the heating and electricity for the property, replacing the hot water tanker, drainage work and other major issues that required specialized contractors and permits from the municipality. The landlord testified that the property is approximately 123 years old and therefore renovation was a significant undertaking.

The tenant submits that the landlord not residing in the rental unit for over a year after the tenancy ended is unreasonable. The tenant testified that the rental unit was habitable and there were no major deficiencies that required repairs. The tenant disputes the landlord's evidence that the rental unit was dangerous due to its age and the wiring and other components were not up to legal standards.

The tenant testified that because he was forced to vacate the rental unit he incurred the cost of renting a storage locker to house his furniture and belongings. The tenant submitted invoices from the storage company as evidence of his loss. The tenant testified that he continues to store some possessions and incur costs but he is only seeking the costs of storage for 6 months after the end of the tenancy, \$903.77.

The tenant gave evidence that the end of the tenancy had major disruptive effect on his life. He testified that he was forced to part with his pet dog, was unable to see his children as often as he did before and that his ability to earn a living was impacted as he could not easily commute to work.

Analysis

The landlord argues that the tenancy ended by way of the fixed term tenancy and not the 2 Month Notice that was issued at the same time. Regardless of the fact that both the tenancy agreement and the 2 Month Notice provide the same date for the end of the tenancy, the undisputed evidence is that the landlord issued a 2 Month Notice. While the issuance of the 2 Month Notice may not have necessary I find that by issuing it the landlord triggered his obligations under the *Act*. I find that the 2 Month Notice conforms to the form and content requirement of section 52 of the *Act* as it is signed and dated by the landlord, gives the rental property address, states the effective date of the notice and the grounds for the tenancy to end. I find that the landlord issued an effective 2 Month Notice and therefore the tenant's right to compensation pursuant to section 51 of the *Act* were triggered.

Furthermore, I note that the landlord did not collect the rent for the month of March, 2016. If the landlord did not intend to rely upon the 2 Month Notice it is reasonable to expect that he would have taken some steps, whether it is issuing a Notice to End Tenancy for Unpaid Rent, communicating to the tenant that the rent was due and owing or making some note of the fact that he believed that the tenancy was ending in accordance with the fixed-term tenancy agreement and not the 2 Month Notice. There is no evidence that the landlord disputed the tenant's right to withhold the last month's rent at the time.

I find that the tenant was entitled to receive from the landlord the equivalent of one month's rent pursuant to section 51(1) of the *Act* and therefore was not obligated to pay rent for the month of March, 2016. Consequently, I dismiss this portion of the landlord's application.

The landlord argues that he paid the tenant's security deposit from his own funds as the tenant did not pay him a deposit at the start of the fixed term tenancy nor was the security deposit amount included in the purchase of the rental property. The tenant testified that he paid the \$500.00 security deposit to the original landlord when he first moved into the rental property. The fixed-term tenancy agreement indicates that the security deposit is \$500.00. The parties gave undisputed evidence that the full amount of the security deposit was returned to the tenant at the end of the tenancy. I find, based on the conduct of the parties and the balance of the evidence that there is insufficient evidence to show the landlord's entitlement to a return of \$500.00 from the tenant. If a security deposit was owing it is reasonable to expect that there would have been some communication between the parties indicating that it was unpaid. I accept the undisputed evidence of the tenant that a security deposit of \$500.00 was paid to the original landlord at the start of his tenancy. If the security deposit was not included in the purchase of the rental property, that is a matter between the landlord and the seller but of no consequence to the tenant. I dismiss this portion of the landlord's application.

. Section 51(2) of the *Act* states that 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.

In the 2 Month Notice the landlord indicated that the tenancy is ending as the rental unit would be occupied by the landlord or a close family member. The undisputed evidence of the parties is that the landlord did occupy the rental unit, but not until June, 2017, over a year after the tenancy was ended.

The landlord testified that this timeline was inevitable and reasonable as the rental unit required major renovations, upgrades and repairs. The landlord testified as to the nature of the repairs he undertook and said that many contractors would not take on the project which further delayed the move-in date.

I find that the landlord has not accomplished the stated purpose for ending the tenancy in a *reasonable* period of time. The undisputed evidence of the parties is that the landlord purchased the rental property in January, 2016, the tenancy ended on April 1, 2016 and the landlord moved into the unit on June, 2017. The landlord provided little documentary evidence of the renovations and repairs. I find the landlord's position that many contractors could not take on the project to be unreasonable given the timeline. I do not find the timeline of the repairs undertaken and completed by the landlord to be at all reasonable. While renovation

projects may often take longer than initially expected I find the speed with which work was done to be inexcusable.

I note that if the rental unit needed major repairs which required the tenant to vacate the rental unit, then the landlord ought to have indicated that as the true reason to end this tenancy. I do not find the deficiencies cited by the landlord to be undiscoverable until the tenant vacated the rental unit. The landlord gave evidence that they obtained some information about the property when they purchased it. The landlord ought to have known prior to the tenancy ending if major repairs were going to be necessary in order to occupy the rental unit. I do not find the nature of the deficiencies that the landlord claims to require repairs that would take over a year.

I find that the landlord has not taken reasonable steps to accomplish the stated purpose of having the rental unit occupied by himself or his close family member. Consequently, I find that the tenant is entitled to a monetary order in the amount of \$1,900, double the monthly rent under this tenancy agreement.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Based on the evidence I find that the tenant has demonstrated that he has suffered some loss due to the landlord's violation but not to justify the full amount of the monetary award claimed. I accept the tenant's evidence that they have suffered loss by putting possessions in a storage facility and that the cost of the storage is \$903.77. Accordingly, I issue a monetary award in that amount.

I do not find that there is sufficient evidence in support of the other portions of the tenant's claim. The tenant provided testimony about the effects of the end of the tenancy. While I accept that the tenant's life has been affected by the landlord's violation I find that there is insufficient evidence to show on a balance of probabilities the damages incurred or the monetary amount of any loss suffered. There is little documentary evidence, figured or information in support of the tenant's claim for damages. Consequently, I dismiss this portion of the tenant's claim.

As the tenant's claim was substantially successful the tenant is entitled to recover the filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,903.77 under the following terms:

Item	Amount
Double Rent (\$950.00 x 2)	\$1,900.00
Storage Locker Fees	\$903.77
Filing Fees	\$100.00
Total Monetary Order	\$2,903.77

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: November 10, 2017

Residential Tenancy Branch