



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: CNL, MNDC, FF

Introduction:

The Application for Dispute Resolution and the Amended Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy
- b. A monetary order in the sum of \$9279
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing and the Amended Application for Dispute Resolution was sufficiently served on landlord. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a 2 month Notice to End Tenancy
- b. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on August 11, 2013. The present rent was \$1539.95 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$750 at the start of the tenancy.

The tenant vacated the rental unit on October 15, 2015. The landlord returned the security deposit of \$750 and compensated the tenant for the equivalent of one month rent under section 51(1) of the Residential Tenancy Act.

Application to Cancel the two Month Notice to End Tenancy:

As the tenant has vacated the rental unit and has no desire to reinstate the tenancy I dismissed the tenant's application to cancel the two month Notice to End Tenancy.

Application for a Monetary Order and order to recover the cost of the filing fee:

With respect to each of the tenant's claims for monetary compensation I find as follows:

- a. I dismissed the tenant's claim of \$1400 for double the security deposit. The security deposit was returned to the Tenant at the end of the tenancy. There is no basis to order the return of the doubling of the security deposit.
- b. The tenant seeks an order in the sum of \$3079 for the equivalent of 2 months rent. She testified she does not believe the landlord intends to do what was set out in the 2 month Notice to End Tenancy. The 2 month Notice to End Tenancy dated as follows:

"The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse"

Section 51(2) of the Residential Tenancy Act provides as follows:

"Tenant's compensation: section 49 notice

- (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 representative of the landlord testified that her mother is the owner of the property. Her grandfather recently passed away. After his passing the family determined that it was appropriate that her grandmother move into the rental unit. The hydro is put in the name of her grandmother. Her grandmother spends time in the main house but sleeps in the rental unit.

I determined the tenant failed to prove she is entitled to a monetary order under section 51(2) of the Act. I am satisfied based on the evidence presented that the owner's mother is occupying the rental unit. The tenant vacated the rental unit on October 15,

2017. The owner's mother moved in shortly thereafter. There is no basis for making an award for the equivalent of double the monthly rent and this claim is dismissed.

- c. The tenant sought compensation in the sum of \$4800 (\$200 a month for 24 months) for the reduced value of the tenancy caused by a restriction of the hot water and heat. The tenant did not keep a contemporaneous record of the problems she faced. However she testified as follows:
- She has experienced problems with the hot water and heat shutting off for the last 2 years.
 - Initially the problems occurred 4 to 10 times a week. She would phone or text the landlord and they would have to re-set it. Sometimes this occurred when she was having a shower.
 - She would send the landlord many messages asking that it be repaired but the landlord failed to make the repairs.
 - The problems got progressively worse and for the three months leading up to the end of August the heat and hot water would shut off many times a day.
 - The landlord finally repaired the problem at the end of August..

The representative of the landlord testified as follows:

- The outages occurred only a couple times a month for the first few years.
- The landlord hired a plumber but that plumber was not able to fix the problem.
- Her mother has problems with English. She and her sister are full time students and work full time. The mother suggested to the tenant that she hired a plumber and they would pay for the cost.
- They initially thought the reason it was shutting off was a safety feature
- The tenant's partner was given instructions on how to re-set the boiler and hot water and he had access to re-set.
- The landlord hired a new plumber who was not able to deal with it because of the death of his father. Eventually it was determined that new parts were necessary and there was a delay before the parts arrived.

Policy Guideline #6 includes the following

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

After carefully considering all of the evidence I determined the tenant is entitled to compensation in the sum of \$200 per month for the three months leading to the end of August 2017. I am satisfied there was a significant interruption in the enjoyment of the rental property for those 3 months. The landlord's effort were not sufficient and the tenant is entitled to compensation.

I dismissed the tenants claim for compensation for the period prior that that time for the following reasons:

- The tenant failed to present sufficient evidence to prove that the disruption was significant. The tenant failed to keep a contemporaneous record of the outages and the extent of the disruption.
- The tenant has an obligation to mitigate her loss and this includes an obligation to file an Application for Dispute Resolution in a timely manner. Had the tenant filed an Application for Dispute Resolution at the time the disruption became significant it would have been heard and the matter dealt with within 3 months of the date of filing the Application for Dispute Resolution. .

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$600 plus the sum of \$100 in respect of the filing fee for a total of \$700.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$700.

This decision is final and binding on the parties.

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 27, 2017

Residential Tenancy Branch