



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on May 31, 2017 (the "Application"). The Tenant applied for a monetary order for money owed or compensation for damage or loss, and an order granting recovery of the filing fee, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing on her own behalf, as did the Landlord. The parties provided affirmed testimony.

The Tenant testified the Landlord was served with the Application package by registered mail. The Landlord acknowledged that it had been received. In addition, a further documentary evidence package, submitted by the Tenant, was received at the Residential Tenancy Branch on October 28, 2017. The Landlord acknowledged receipt.

The Landlord submitted documentary evidence in response to the Application. According to the Landlord, a package received at the Residential Tenancy Branch on October 16, 2017, was served on the Tenant in person. The Tenant acknowledged receipt. A further documentary evidence package was served on the Tenant by leaving a copy at in the drop box at the Tenant's new address. The Tenant denied receiving it. As this documentary evidence was not served on the Tenant in accordance with Rule of Procedure 3.15, and the Tenant did not receive it, I have not considered it further in this Decision.

No further issues were raised with respect to service and receipt of the above documents. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure.

However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed the tenancy began on July 15, 2012, and ended when the Tenant vacated the rental unit at the end of April 2016. Rent was due in the amount of \$5,600.00 per month. The Tenant paid a security deposit to the Landlord, which was returned to the Tenant at the end of the tenancy.

The Tenant testified she received a 2 Month Notice to End Tenancy for Landlord's Use of Property on February 28, 2016 (the "2 Month Notice"). A copy of the 2 Month Notice was submitted into evidence. The 2 Month Notice was issued on the following basis:

The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

[Reproduced as written.]

Although the Tenant asked to remain in the rental property, she moved out at the end of April 2016, relying on the Landlord's assertion that the renovation required vacant possession.

In addition, the Tenant testified that she returned to the rental property in July 2016. Although she attended to inquire about her mail, she discovered the rental property had been re-rented.

In reply, the Landlord acknowledged she did not do the planned renovations and move into the rental property as intended. The reason given was that she attended the rental property with her son after the Tenant had vacated. While there, she discovered he was too tall to walk down the stairs. After a discussion with her contractor, she learned the cost to alter the staircase would be prohibitive. Therefore, due to her safety concerns, the Landlord cancelled plans to sell her home and move into the rental

property. At the same time, the Landlord terminated the realty listing for her home and requested that her agent re-rent the rental property. The Landlord confirmed the rental property was re-rented in July 2016.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant sought a monetary order in the amount of \$11,200.00, pursuant to section 51 of the *Act*. This provision requires a landlord to take steps to accomplish the stated purpose for ending the tenancy within a reasonable time, or to use the rental unit for the stated purpose for at least six month beginning within a reasonable period after the effective date of the notice to end tenancy. A landlord who fails to do so may be ordered to pay compensation to a tenant in the amount of double the rent payable under the tenancy agreement.

In this case, the Landlord acknowledged that she did not renovate the rental property as alleged by the Tenant. Rather, she remained in her home and re-rented the property to new tenants in or about July 2016. I find the Landlord did not take steps to accomplish the stated purpose for ending the tenancy within a reasonable time, or to use the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice to end tenancy. Accordingly, the Tenant is entitled to a monetary award in the amount of \$11,200.00, which is double the rent payable under the tenancy agreement.

Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$11,300.00, which is comprised of \$11,200.00 in compensation pursuant to section 51 of the *Act* and \$100.00 in recovery of the filing fee.

Conclusion

I grant the Tenant a monetary order in the amount of \$11,300.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 6, 2017

Residential Tenancy Branch