



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*.

Only the tenant appeared at the hearing. The tenant was represented at the hearing his counsel N.S., and articulated student, T.D. The tenant was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

At the hearing the tenant explained that he sent a copy of his evidentiary package and application for dispute to the landlord by Canada Post Registered Mail on November 28, 2017. A copy of the Canada Post Registered mail receipt was provided to the hearing and submitted to the hearing as part of the tenant’s application for dispute. Pursuant to sections 89 & 90 of the *Act*, the landlord is deemed served with these documents on December 1, 2017.

Following opening remarks, counsel for the tenant asked if the tenant’s application for dispute could be amended to seek a monetary award of \$5,400.00. As the landlord would not be prejudiced by this amendment seeking a lower monetary award, I amended the tenant’s application pursuant to section 64(3)(c) to reflect this request.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Background and Evidence

The tenant explained that this tenancy began on August 15, 2017 and ended on November 30, 2017. Rent was \$1,200.00 per month, and a security deposit of \$600.00 continues to be held by the landlord.

The tenant has applied for a monetary award of \$5,400.00. Specifically, he has applied for an award as follows:

ITEM	AMOUNT
Penalty under section 51 of the <i>Act</i> for landlord's use (2 x 1,200.00)	\$2,400.00
Aggravated Damages	3,000.00
	\$5,400.00

Counsel for the tenant argued that the tenant should be entitled to an award under section 51 of the *Act*, because the tenant vacated the property after being served with a 2 Month Notice to End Tenancy for Landlord's Use of Property. This notice stated that the property was to be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Section 51 of the *Act* states;

If 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 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.

Included as part of the tenant's evidentiary package, is a letter from the landlord to the tenant. It states, "I have provided you with a 2 month notice for eviction. My brother's current lease is up at the end of November, and he will be moving back into the property. For this reason, you have 2 months to leave the rental premises."

In addition to the application for a monetary award under section 51 of the *Act*, the tenant has applied for an award under section 67 of the *Act*, based on alleged aggravated damages. At the hearing, counsel for the tenant argued that the poor state of repair in the rental unit impaired the tenant's health. Counsel stated, "The landlord knew the Applicant was not in good health and she rented the unit to him...and

subsequently failed to provide the unit with a heat source as required by the City.” As part of their evidentiary package, the tenant supplied a copy of the City’s inspection report noting the shortcomings in the rental unit, the fine which was levied against the landlord by the City for these short comings and a doctor’s note which directly attributed the tenant’s health conditions to the state of accommodation offered to him by the landlord.

The tenant explained that he was aware of the state of disrepair in the rental unit when he first occupied the premises, but that he had been granted numerous assurances that the property would be repaired.

Analysis

Section 51(2) of the *Act* states, “If 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 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, 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.”

I am satisfied based on the evidence before me and the testimony provided by the tenant and the submissions of his counsel that the landlord did not use the rental unit for the purpose stated in the 2 Month Notice to End Tenancy. The tenant submitted undisputed written evidence in the form of an email from the landlord stating her true intentions for the rental unit, that being the occupation of the unit her brother. A sibling is not considered a “close family member” as defined by section 49(1) of the *Act*. The landlord provided no submissions disputing this advertisement. I find that the tenant accepted the 2 Month Notice and relied on the reason cited on it as reason to vacate the rental unit. The landlord did not use the property for its stated purpose and must therefore pay the tenant compensation equivalent to double the monthly rent payable, in this case, 2 x \$1,200.00, or \$2,400.00.

The second portion of the tenant’s application concerns an application for a monetary award of \$3,000.00 for aggravated damages pursuant to section 67 of the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the tenant to prove his to his claim for a monetary award.

Based on the evidence presented at the hearing by the tenant, I am satisfied that a loss has occurred as a direct result of the landlord's inaction related to maintenance that was required in the rental unit. As part of his evidentiary package, the tenant supplied both a doctor's note which directly attributed his declining health and increased stress to the poor condition of the rental unit, and a letter from the City speaking to the dire need for repairs in the rental unit.

Residential Tenancy Policy Guideline #16 discusses the situation where an Arbitrator is awarding compensation for aggravated damages. This *Guideline* states, "Aggravated damages are for intangible damage or loss. Aggravate damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence."

While I do find that some loss has incurred, I do not find that the tenant has suffered a loss that warrants the awarding of aggravated damages. I find that the tenant was aware of the state of the rental unit when he first occupied it and therefore had some familiarity with the issues plaguing the rental unit. The tenant was not required to take possession of the rental unit. At the same time, I find that the landlord owed the tenant a duty of care to maintain the rental unit in an acceptable standard after he took possession of the rental unit.

I find that an award of Nominal Damages would be more appropriate in this case. *Policy Guideline #16* defines Nominal Damages where it has been proven that there has been an infraction of a legal right, but no significant loss has been proven. While the tenant's health is obviously a very important issue, and can be seen as a "significant" loss, the doctor noted the tenant being "quite emotionally and physically disturbed," I do not find an award of \$3,000.00 to be justified. I find that an award of \$500.00 would be more appropriate in the circumstances before me as no medication or treatment changes were suggested.

Conclusion

I issue a Monetary Order of \$2,900.00 in favour of the tenant as follows:

Item	Amount
Compensation pursuant to section 51 of the <i>Act</i> (2 x 1200)	\$2,400.00
Award of Nominal Damages	500.00
Total =	\$2,900.00

The tenant is provided with a Monetary 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: December 21, 2017

Residential Tenancy Branch