



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FFT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 11:11 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that she had served the landlord with her application for dispute resolution hearing package ("Application") and evidence on November 22, 2017 by way of registered mail. The tenant provided the tracking receipt in her evidence. In accordance with sections, 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application and evidence on November 27, 2017, five days after mailing. The landlord did not submit any written evidence for this hearing.

The tenant indicated in the hearing that she was withdrawing the portion of her monetary claim for loss of quiet enjoyment. Accordingly the tenant's application for \$500.00 was cancelled.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

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

Background and Evidence

This month-to-month tenancy began on June 1, 2010. Monthly rent was set at \$1,000.00 per month, payable on the first day of each month.

The tenant moved out on December 31, 2017, the effective date of the 2 Month Notice issued to her by the landlord on September 19, 2017. The landlord stated on the 2 Month Notice the following reason for ending the tenancy:

“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.”

A copy of the 2 Month Notice was included as part of the tenant’s evidence. The tenant is seeking compensation as the landlord or his family member did not move into the rental home as stated on the 2 Month Notice. The tenant provided undisputed testimony in this hearing that the landlord had listed the home for sale before she had moved out, and the new owner took possession on or around December 15, 2017. The tenant provided in her evidence the listing for the property. The tenant testified that she was returned her \$500.00 security deposit for this tenancy by the new owners.

Analysis

Section 51(2) of the *Act* reads in part as follows:

51 (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.

I have considered the evidence and undisputed testimony of the tenant. The tenant provided documentation to support that the property was listed for sale by her landlord. The tenant testified that the new owner took possession around December 15, 2017.

Based on a balance of probabilities, I find that the tenant has demonstrated that she is entitled to a monetary Order of double their monthly rent pursuant to section 51(2) of the *Act* because the landlord has not used the rental unit for the stated purpose in the landlord's 2 Month Notice. Based on the evidence before me, I am not satisfied that the respondent had in fact moved into the rental property, nor that was the intention when the 2 Month Notice when it was issued to the tenant.

For the reasons outlined above, I find that the tenant is entitled to compensation as set out in section 51(2) of the *Act*. I therefore find that the tenant is entitled to the recovery of the equivalent of two months rent. As the normal monthly rent was set at \$1,000, I find that the tenant is entitled to a monetary Order in the sum of \$2,000.00 as claimed.

As the tenant was successful in her application I find that she is entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$2,100.00 for the landlord's failure to comply with section 49 of the *Act*, and for recovery of the filing fee for this application.

The tenant(s) are provided with this Order in the above terms and the landlord must be served with a copy of 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: January 31, 2018

Residential Tenancy Branch