



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, FF

Introduction

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

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- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72; and

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties acknowledged receipt of the others documentary evidence. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of two months' rent as claimed?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on October 1, 2015 on month to month basis. The monthly rent was \$1200.00.

The tenant gave the following testimony:

On November 30, 2016 the landlord served the tenant with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by January 31, 2017. The ground for the Notice was "*that all of the conditions for the sale of the rental unit have been satisfied and the*

purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit”.

The tenant moved out of the rental on December 31, 2016 but later discovered that the landlord did not move into the rental unit; instead found a listing that the house was for rent as of January 4, 2017. The tenants submitted documents in support of their application, including a copy of the listing that shows the home is for rent.

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The landlord gave the following testimony:

The landlord testified she was intending to move in but found out that she became pregnant on December 29, 2016 and realized that the property would be too small and not meet their needs. The landlord testified that they received advice from their realtor that they shouldn't sell their previous home and not move into the subject property. The landlord testified that they had no ill will towards the tenant and that due to a change in life circumstances they no longer needed or wanted to move into the home.

Analysis

The tenant requested that he be reimbursed his gas costs to attend at the Branch and to prepare for this hearing. The tenant also requested reimbursement of the fee from the land title office. I find that those costs are the responsibility of the tenant for litigating ones claim; accordingly I dismiss that portion of his claim.

The tenant seeks two months compensation plus his filing fee. Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (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 applicant seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. In the landlords own testimony she acknowledges and concedes she did not act in accordance with what the basis of the notice stated. I accept the landlords' testimony that she meant no malice, however that does not relieve her of her responsibilities and obligations under the Act. The tenant has been successful in his application.

The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. I am satisfied that the tenant is entitled to $\$1200.00 \times 2 \text{ months} = \2400.00 plus the recovery of the \$100.00 filing fee for a total award of \$2500.00.

Conclusion

The tenant has established a claim for \$2500.00. I grant the tenant an order under section 67 for the balance due of \$2500.00. This order may be filed in the Small Claims 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: February 07, 2018

Residential Tenancy Branch