



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C. Walker Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to section 67 of the *Residential Tenancy Act* (the “Act”) for a Monetary Order for compensation.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on September 30, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on October 5, 2017. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant seeks to amend the application for dispute resolution by adding a claim for recovery of the filing fee that, in error, was missed on the original application.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure provides that in circumstances that can be reasonably anticipated an application may be amended at the hearing. Based on the Tenant’s undisputed evidence of a simple oversight and given that the claim for recovery of a filing fee is a reasonably foreseeable claim in any

application where such a fee is paid I amend the application to add the claim for recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in June 2013 and ended on June 30, 2017. Rent of \$925.00 was payable on the first day of each month. The security deposit that had been collected by the Landlord at the outset of the tenancy has been returned to the Tenant.

The tenancy ended as a result of the Tenant being given a one month notice to end tenancy for landlord's use (the "Notice"). The Notice is dated April 28, 2018 and gives as the stated purpose for the Notice that the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. A hand written note is inserted alongside this reason with "or demolish if necessary". In mid-August 2017 the unit was advertised for rent with a rental amount of \$1,000.00. The Tenant provides a copy of that advertisement. The Tenant claims the equivalent of double the monthly rent of \$1,850.00

Analysis

Section 51(2) of the Act provides that:

(a) if steps have not been taken to accomplish the stated purpose for ending the tenancy for landlord's use within a reasonable period after the effective date of the notice, or

(b) 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,

the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As the Notice contains an option for selecting demolition as a stated purpose for ending the tenancy and as this option was not selected in the Notice I consider that the only purpose selected by the Landlord was the intention to occupy the unit. Based on the undisputed evidence that the unit was advertised for rent I find that the Tenant has substantiated that the unit was not used for the Landlord's occupation nor were steps taken to accomplish the Landlord's occupation of the unit. The Tenant is therefore entitled to compensation of **\$1,850.00**. As the Tenant's claim has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,950.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,950.00**. If necessary, 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: April 30, 2018

Residential Tenancy Branch