



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and "other" which was to recover the cost of the filing fee. The tenant is seeking compensation of two month's rent due to the landlord failing to comply with the reason stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 28, 2017 ("2 Month Notice") for a minimum of six months as required by the *Act*.

The tenant, the landlord TW and the spouse of the landlord S.W. attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The parties confirmed being served with the documentary evidence from the other party and that they had the opportunity to review that documentary evidence prior to the hearing. Neither party raised any concerns regarding the service of documentary evidence as a result.

Preliminary and Procedural Matters

As the tenant provided an email address in his application, the tenant will be provided the decision and monetary order by email. The landlord will be sent the decision by regular mail as an email address for TW was not included in the application.

At the outset of the hearing, the parties and the spouse of landlord TW, SW confirmed that TW was the correct named respondent. The tenant testified that he was advised by

TW that the previous landlord sold the property to TW and that TW was the new landlord.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of double the monthly rent pursuant to section 51(2) of the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

There is no dispute that a month to month tenancy existed between the parties. The parties confirmed that monthly rent was \$1,750.00. There is also no dispute that TW served a 2 Month Notice which indicates the reason to end tenancy as:

“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.”

[Reproduced as written]

The parties also agreed that the landlord wrote the following in handwriting on the 2 Month Notice after the above reason which reads:

“or demolish if necessary”

[Reproduced as written]

The landlord did not check off the reason that reads “The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.”

The landlord submitted a document in evidence which indicates that during the first week of August, the demolition was delayed due to weather and the landlord testified that their contractor advised them to re-rent in the interim. The landlord writes as follows:

“...we rented out to new tenants as we awaited demolition in spring of 2018.”

[Reproduced as written]

The landlord confirmed that the tenant vacated the rental unit on July 31, 2017 in accordance with the 2 Month Notice and that new tenants moved in September 1, 2017 due to delays with permits.

The tenant is seeking compensation of two month's rent due to the landlord failing to comply with the reason indicated on the 2 Month Notice.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 in sections 7 and 67 of the *Act*. Accordingly, 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 under the *Act* to minimize the damage or loss.

Section 51(2) of the *Act* applies and states:

(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.

[My emphasis added]

As the landlord has confirmed re-renting the rental unit to new tenants effective September 1, 2017, I find the landlord failed to use the rental unit for the stated purpose for at least six months as required by the *Act*. Therefore, I find the landlord breached the *Act* by re-renting in slightly more than one month from when the tenant vacated and that the landlord failed to wait at least six months as required by the *Act*. I find the landlord owes the tenant **\$3,500.00** which is double the \$1,750.00 monthly rent pursuant to section 51(2) of the *Act*.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

The tenant has established a total monetary claim of **\$3,600.00** as described above. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$3,600.00** accordingly.

In addition to the above, I note that the landlord modified the 2 Month Notice by writing "or demolish if necessary" which is not permitted under the *Act* and is contrary to section 52(e) of the *Act* which requires that 2 Month Notices be in the prescribed form.

I caution the landlord to use the prescribed forms in the future without modifying the prescribed forms.

I caution the landlord not to use the rental unit for a different reason other than what is stated in the 2 Month Notice in the future.

Conclusion

The tenant's application is fully successful.

The landlord has failed to comply with the reason stated in the 2 Month Notice for at least six months from the effective date of the 2 Month Notice contrary to the *Act*. The tenant has met the burden of proof and has established a total monetary claim of \$3,600.00. The tenant has been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$3,600.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned twice as described above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 19, 2018

Residential Tenancy Branch