



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. The Landlord did not attend. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Respondent, who is the Landlord, did not attend the hearing, I confirmed service of documents as explained below.

The Tenant testified that the Application and the Notice of Hearing were sent to the Landlord at their address for doing business as a landlord on October 14, 2017, by registered mail and provided me with the registered mail tracking number. With the Tenant’s consent, I logged into the mail service provider’s website and verified that the registered mail was sent as described by the Tenant and picked up and signed for on November 3, 2017. As a result, I find that the Landlord was served with the Application and the Notice of Hearing on November 3, 2017, the date the registered mail was picked up and signed for.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in his favor will be e-mailed to him at the e-mail address provided in the online application system.

Preliminary Matters

The tenancy agreement in the documentary evidence before me lists a different landlord than the Respondent. The Tenant testified that the original landlord sold the property to the respondent who took possession on June 23, 2017, and as a result, the purchaser became his landlord. The Tenant testified that he has first-hand knowledge of this sale as he is a realtor and was involved in the sale of the property. The Tenant also stated that the purchaser was aware the property had a tenant at the time of purchase and did not request that the previous owner serve a Two Moth Notice to End the Tenancy for Landlord's Use of Property (a "Two Month Notice") because all the conditions for the sale of the rental unit had been satisfied and the purchaser or their close family member intended in good faith to occupy the rental unit.

As the definition of a landlord under section 1 of the *Act* includes the owner of a rental unit, I find that the Respondent, who purchased the rental unit and took possession of the property on June 23, 2017, meets the definition of a landlord under the *Act*. As a result, I am satisfied that the Respondent is the landlord and a party to the dispute and will therefore be referred to as the "Landlord" throughout this decision.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the one-year fixed-term tenancy began on August 1, 2016, at a monthly rental amount of \$1,600.00. The Tenant testified that his rent was still \$1,600.00 at the time the tenancy ended.

The Tenant stated that on approximately July 2, 2017, he received a Two Month Notice from the Landlord, stating that the Landlord or their close family member intends to occupy the rental unit. The Two Month Notice in the documentary evidence before me, dated June 28, 2017, has an effective vacancy date of August 31, 2017, and states that the reason for ending the tenancy is because the rental unit will be occupied by the landlord or the landlord's close family member.

The Tenant testified that he found a new rental unit and moved out between October 25, 2017 – October 31, 2017, in compliance with the Two Month Notice. However, the Tenant stated that the Landlord posted the rental unit for re-rental online on September 30, 2017, which is before his tenancy even ended, and provided me with a copy of the advertisement. As a result, the Tenant stated that the Two Month Notice was served on him in bad faith as neither the Landlord nor their close family member intended in good faith to occupy the rental unit. Further to this, the Tenant sought compensation in the amount of two month's rent pursuant to section 51 of the *Act* as neither the Landlord nor their close family member occupied the rental unit for at least six months beginning within a reasonable period after the effective date of the Two Month Notice.

The Landlord did not attend the hearing to provide any evidence or testimony for my consideration.

Analysis

Section 51(2) of the *Act* states that in addition to the amount payable under subsection one, 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 six 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 accept the Tenant's undisputed testimony that rent was \$1,600.00 and that neither the Landlord nor their close family member ever intended to occupy the rental unit. I also accept the Tenants undisputed testimony that neither the Landlord nor their close family member occupied the rental unit for at least six months beginning within a reasonable period after the effective date of the notice as the Tenant submitted documentary evidence that the Landlord placed the rental unit up for re-rental after the Two Month Notice was served on him and before the effective date of the notice.

Based on the above the Tenant is entitled to \$3,200.00 in compensation pursuant to section 51(2) of the *Act*. As the Tenant was successful in his application, I also find that he is entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$3,300.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$3,300.00. The Tenant is provided with this 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: May 2, 2018

Residential Tenancy Branch