



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RPP FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

No issues were raised with the service of the application and respective evidence packages except the landlord argued that he only received the tenant's evidence by e-mail and not a hard copy. The landlord acknowledged receiving all of the evidence by e-mail and being able to view the evidence in this manner. The landlord testified that he was just not able to print a hard copy.

Section 88 of the Act sets out how documents may be served. E-mail message is not an acceptable method of service pursuant to section 88 of the Act. However, section 71(2)(c) of the Act provides the Director the authority to order that a document is sufficiently given or served for the purposes of the Act, in cases where it has not been served in strict accordance with section 88 or 89 of the Act. In the case at hand, I find the landlord was sufficiently served with the tenant's evidence by e-mail. I make this finding as the landlord acknowledged being able to view the tenant's evidence and the only relevant evidence for this hearing were the advertisements of the rental unit submitted by the tenant. The advertisements were originated by the landlord and the contents of them were not disputed.

Issues

Is the tenant entitled to a monetary order for compensation for damage or loss?

Should the landlord be ordered to return the tenant's personal property?

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

Background & Evidence

On December 31, 2017, the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant vacated the rental unit on the effective date of the 2 Month Notice, February 28, 2018. The monthly rent was \$925.00.

The tenant is claiming an amount equivalent to double the monthly rent as compensation for the landlord not using the rental property for his own use after issuing the 2 Month Notice. The tenant testified that the 2 Month Notice was issued on the grounds that the landlord would be occupying the rental unit.

In support of his claim the tenant submitted copies of advertisements offering the rental unit for rent as early as May 10, 2018.

The tenant is also claiming he would like the landlord to return his washer and dryer which he left behind at the rental unit. The tenant testified that he took over this tenancy from the previous tenant and he purchased these items from the previous tenant. The tenant testified that the previous tenant installed these items.

The landlord testified that his intent was to move-in to the rental unit with his son but as his medical condition improved he was able to continue residing in his existing home. The landlord testified that his son did move into the rental unit during the period of March 7, 2018 to April 11, 2018. The landlord acknowledged the rental unit was advertised as being available for rent in May 2018.

The landlord testified the rental unit was provided with some furnishings which included a washer and dryer. The landlord testified that the previous tenant took the washer and dryer that were originally in the unit and replaced them with the existing ones. The landlord submitted a tenancy agreement with an addendum containing of the inventory in the rental unit. The inventory list includes a washer and dryer.

Analysis

Section 51 (2) of the Act provides that 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 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 find that the landlord or a close family member of the landlord did not occupy the rental unit for at least a 6 month period after the effective date of the 2 Month Notice. The landlord did not dispute this fact and the evidence supports that the landlord advertised the rental unit as available for rent during this period.

I allow the tenants claim for an amount equivalent to double the monthly rent and award an amount of \$1850.00, which is double the monthly rent of \$925.00.

The tenants claim for return of the washer and dryer is dismissed. I find the washer and dryer were provided to the tenant at the start of the tenancy and included in the inventory list attached to the rental agreement. I find the tenant has provided insufficient evidence that these items were the property of the previous tenant giving the previous tenant the right to sell them.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1950.00.

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a Monetary Order in the amount of \$1950.00. 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: July 09, 2018

Residential Tenancy Branch