



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on July 5, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

The Tenant attended the hearing. The Landlord did not attend the hearing. The Tenant testified that he personally attended the address listed as the "address for service" on the 2-Month Notice he received, and left a copy of the Notice of Hearing with a receptionist at the front desk. The Tenant stated that he left two copies of the Notice of Hearing and evidence on November 30, 2017. One was addressed to D.L. (the Landlord as per the 2-Month Notice), and the other was addressed to the realty company whom he had dealt with throughout his tenancy and who operated out of the location listed as the "address for service" on the 2-Month Notice. The Tenant stated that when he went to the place listed as the address for service on the 2-Month Notice, he noticed it was a proper business location for the realty company, so he felt it was appropriate to leave his documentation (hearing package) with an agent working at the front desk. Further, the Tenant returned on January 23, 2018, to serve personally deliver further evidence to the Landlord, in the same manner specified above. Pursuant to section 88, 89, and 90 of the Act, I find the Landlord has been sufficiently served with the Notice of Hearing and evidence.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenant stated that monthly rent was \$2,562.50 per month (corroborated by the Tenancy Agreement). The 2-Month Notice to End Tenancy (the Notice) was provided into evidence. This Notice was given to the Tenant on May 24, 2017, and the effective date was July 31, 2017. On page 2 of the Notice, the Landlord selected the following ground as the basis for the Notice:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The Tenant stated that he moved out of the rental unit on July 31, 2017, which was the effective date of the Notice. The Tenant stated that he was told by the agent of the Landlord that the Landlord wanted to move into the rental unit, and the Tenant accepted this and moved out. Subsequently, the Tenant stated that he received a text message from the concierge at the condo building on November 1, 2017, stating that there was a package waiting for him. The Tenant stated that he went to get the package and noticed that it was not addressed to him, but rather to an individual named C.C.

The Tenant stated that he sent a registered mail delivery to C.C. at his old address to see if this person was actually living there. The Tenant stated that he confirmed with the concierge that the registered mail package was signed for by the front desk at the condo building, and delivered to C.C. at the Tenants old residence. The Tenant stated that he confirmed with the concierge that C.C. was in fact living at his old residence.

The Tenant also stated that on January 23, 2018, he got a Facebook message from C.C (also provided into evidence). C.C. stated that she was the new occupant of the rental unit and she had lots of mail for him to pick up that had accumulated since he

moved out. The Tenant stated that he met with C.C. to get his mail and she confirmed that she was renting the unit for \$2,800.00 per month, and that she was not affiliated with the Landlord. C.C. confirmed with the Tenant that she was “just a renter”.

The Tenant stated that since the Landlord did not use the rental unit for the purpose stated on the Notice, he is entitled to 2 month’s compensation, pursuant to section 51 of the Act.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant provided undisputed testimony and he is seeking two month’s rent in compensation (2 x \$2,562.50) because the Landlord did not utilize the unit for the purpose stated on the Notice.

First, I turn to the following portion of the Act which outlines what the Tenant would be entitled to if the Landlord did not use the property for the stated purpose for at least 6 months:

Tenant's compensation: section 49 notice

- 51** (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.

In this case, the undisputed evidence before me indicates that the Landlord re-rented the rental unit to an individual name C.C., rather than using it for the purpose indicated on the Notice. The Tenant stated in the hearing that he specifically confirmed with this individual that she was not affiliated with the Landlord and was renting the unit. As a result, I find the Tenant is entitled to monetary compensation which is equivalent to double the monthly rent payable under the tenancy agreement (2 x \$2,562.50).

As the Tenant was successful with his application, I also grant him the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenant a monetary order in the amount of \$5,225.00 because the Landlord breached section 51 of the Act.

Conclusion

I grant the Tenant a monetary order in the amount of \$5,225.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 05, 2018

Residential Tenancy Branch