



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction:

Both parties and witnesses attended the hearing and gave sworn or affirmed testimony. The tenant provided evidence that she served their Application for Dispute Resolution by registered mail to the landlord and the landlord acknowledged receipt. I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- (a) Compensation pursuant to sections 49, and 51 for a compensation as the landlord did not use the property for at least 6 months for the reason given on the Notice to End Tenancy;
- (b) Losses suffered due to illegal eviction; and
- (c) recovery of the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to compensation of two month's rent and other losses? Is she entitled to recover filing fees for the application?

Background and Evidence:

Both parties and witnesses for the landlord attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced April 1, 2016, that rent was \$1451.80 a month and a security deposit and pet damage deposit was paid, each in the amount of \$700. The tenant occupied the upper level of the home.

It is undisputed that the landlord served a Notice to End Tenancy dated October 31, 2017 pursuant to section 49 of the Act as she said that her son wanted to move into the rental unit with his girlfriend. On that basis, the tenant's application to cancel the Notice was dismissed on January 18, 2018 and an Order of Possession was granted to the landlord to be effective on March 31, 2018. The tenant vacated on February 28, 2018. The landlord frankly admitted that neither her son nor another close family member moved into the suite. She said the tenant had caused certain problems that made his fiancée's parents anxious so his fiancée said she did not want to live there. The landlord rented the unit to another couple who are not related to her.

The tenant said she discovered this when she went to see if there was any mail for her. The new tenants allege she has caused significant disturbance of their peaceful enjoyment by pushing her way into their home and photographing the female tenant and also their vehicles. They say she wanders around their yard and had a male relative come by also. The applicant tenant denies this and said she visits the neighbours who are friends of hers. Both parties were disputing with each other concerning her alleged trespass and assault on the female tenant. Apparently police were called once. I advised them that I have no authority to deal with criminal trespass and assault and similar accusations that they were making. They continued to make allegations which are not relevant to this matter so the hearing was terminated.

The tenant said she had explored the possibility of increased rental compensation based on the amendments to the Act which came into force on May 17, 2018 but she realizes that her Notice to End Tenancy was dated October 31, 2017 and the amendments only apply to Notices served subsequent to May 17, 2018.

The tenant claims as follows:

1. 2 months rent as compensation pursuant to section 51;
2. Rent in excess of her former rent: \$548.20 for 6 months = \$3289.20
3. Storage Costs \$527.10 because her new place is smaller
4. Cost of parking in her new place: \$35 mo. X 6 months= \$210.00

The landlord said the tenant had plenty of time to find a new place at a similar rent; if she chose somewhere more expensive, it is not the landlord's duty to compensate her for this. Furthermore, she rented the upper suite of two bedrooms in her home and it was up to her to rent a similar place that would accommodate her goods. The landlord said that it was not her responsibility to compensate for parking fees; if the tenant had rented a similar place, she would have had sufficient space and parking.

Analysis:

The ***Residential Tenancy Act*** provides in section 51(2) that a tenant who receives a Notice to End Tenancy under section 49 for landlord's use of the property is entitled to receive the equivalent of double the monthly rent if 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. Although the landlord provided some credible reasons why the unit was not used for her stated purpose of family occupancy, I find section 51(2) of the Act provides in these circumstances the tenant is entitled to an amount equivalent to double the monthly rent. I find her entitled to compensation of \$2903.60.

In respect to her claim for damages, I find 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 whatever was reasonable to minimize the damage or loss.

I find the landlord violated section 49 of the Act and the tenant was awarded compensation for that violation under section 51. I find insufficient evidence that the landlord's violation caused the tenant to incur the other damages or loss claimed. I find she was renting an upper unit in a house and moved to a strata building which has a different kind of accommodation with different costs and amenities. I find the tenant provided insufficient evidence to show that she was unable to find similar accommodation (e.g. renting in a home) at a similar rent with amenities such as parking and sufficient storage. I find insufficient evidence that she did whatever was reasonable to mitigate any loss she incurred. I dismiss this portion of her claim.

With respect to the allegations of trespass and assault, I find I have no jurisdiction over criminal matters. If these are happening, I advise the parties to consult police and lay appropriate charges.

Conclusion:

I find the tenant entitled to the equivalent of two month's rent pursuant to section 51. I find she is entitled to a monetary order for \$3003.60 which includes recovery of the \$100 filing fee. I dismiss the remainder of the application of the tenant in its entirety without leave to reapply.

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 10, 2018

Residential Tenancy Branch