



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Specifically, the tenants are seeking compensation in the amount of two month's rent due to the landlord failing to comply with the reason provided in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 31, 2017 ("2 Month Notice"). The tenants are also seeking the recovery of the cost of the filing fee under the Act.

The tenants and the landlord attended the teleconference hearing. The parties were affirmed and presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Both parties confirmed that they had been served with documentary evidence by the other party and that they had the opportunity to review that documentary evidence prior to the hearing. I find the parties were sufficiently served as a result.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Are the tenants entitled to any monetary compensation under the *Act*, and if so, in what amount?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 1, 2016 and reverted to a month to month tenancy after February 28, 2017. The tenants vacated the rental unit on October 1, 2017 after accepting the 2 Month Notice served by the landlord. Monthly rent during the tenancy was \$2,900.00 per month and due on the first day of each month.

The tenants are seeking \$5,800.00 plus the recovery of the cost of the filing fee comprised of twice the monthly rent of \$2,900.00 due to the landlord failing to comply with the reason indicated on the 2 Month Notice.

A copy of the 2 Month Notice was submitted in evidence and lists the reason to end the tenancy as:

“The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse.”

[Reproduced as written]

The tenants allege in their application that the landlord sold the rental unit and did not occupy the rental unit as indicated on the 2 Month Notice. The landlord testified that on October 10, 2017 he found a roof leak and due to being denied an additional mortgage for the home, he had to sell the rental unit for financial reasons although he intended on complying with the reason stated in the 2 Month Notice. The landlord submitted a copy of the Contract of Purchase and Sale which supports his testimony that the landlord accepted an offer to sell his property to a person that is not related to the landlord dated November 16, 2017. The landlord testified that the closing date of the transaction was January 4, 2018 and that the rental unit is sold as of January 4, 2018.

Analysis

Based on the undisputed documentary evidence and the unopposed 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 to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Section 51 of the *Act* applies and states:

(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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 confirmed that due to financial reasons he accepted an offer for purchase on November 16, 2017 and that on January 4, 2018 the purchase closed and completed, I am satisfied that the landlord sold the rental unit within six months after the effective vacancy date of the 2 Month Notice which was October 1, 2017. In addition, I find that selling the rental unit is contrary to the reason as indicated in the 2 Month Notice by the landlord.

As a result, I find the landlord did not use the rental unit for the reason stated in the 2 Month Notice and that pursuant to section 51(2) of the *Act* the landlord must pay the tenants **\$5,800.00** which is twice the monthly rent of \$2,900.00.

In addition, I grant the tenants **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Based on the above, I find the tenants have established a total monetary claim of **\$5,900.00** comprised of \$5,800.00 as indicated above plus the filing fee. Therefore, I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$5,900.00.

Conclusion

The tenants' application is successful.

The tenants have established a total monetary claim of \$5,900.00 as indicated above. The tenants have been granted a monetary order under section 67 of the *Act* in the amount of \$5,900.00. 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.

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: July 17, 2018

Residential Tenancy Branch