



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' 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; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:45 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m.

Tenant R.V. attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Tenant R.V. (the tenant) indicated that they would be representing the interests of both tenants in this matter.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenant testified that the Application for Dispute Resolution (the Application) and all supporting evidence was served to the landlord by way of registered mail on February 09, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find the landlord was deemed served with the Application and evidence on February 14, 2018, the fifth day after the registered mailing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for damage or loss under the Act, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave undisputed sworn testimony that this tenancy began on August 01, 2011 and ended based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) served to them on September 18, 2017.

The tenant gave written evidence that the monthly rent at the time that the tenancy ended was \$788.12 and was due on the first day of each month.

A copy of the Two Month Notice dated September 17, 2016, with an effective date of November 28, 2017, was also included in the tenants' evidence.

In addition to the above noted evidence, the tenant provided:

- A copy of the "Buyers Notice to Seller for Vacant Possession" dated September 12, 2017, was provided in the tenant's evidence which indicates that the landlord named on the Application is the purchaser of the rental unit. The landlord requests the Two Month Notice to be served to the tenants as they intended on occupying the rental unit;
- A copy of a Land Title Search document dated February 05, 2018, showing the landlord as the current owner of the rental unit with the landlord's mailing address; and
- Copies of signed statements from the current occupants of the rental unit since December 2017 and January 2018 which indicate that they are not the landlord or a close family member of the landlord.

The tenant gave undisputed affirmed testimony and evidence that the owner of the rental unit, at the time they were living there, issued a Two Month Notice based on the landlord purchasing the rental unit and giving notice to the owner that the landlord was going to occupy it, which the tenants accepted. The tenant testified that they moved out of the rental unit by the effective date of the Two Month Notice but that the landlord, who purchased the rental unit, did not take any steps to occupy it as indicated on the Two Month Notice.

The tenants are requesting a monetary award in the amount of \$1,576.24, the equivalent of two month's rent as the landlord did not do what they said they would do on the Two Month Notice and did not take any steps to occupy the rental unit.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Having reviewed the evidence, the undisputed affirmed testimony, and based on a balance of probabilities, I find that the tenants have incurred a loss due to the actions of the landlord in violation of the *Act*.

As the Two Month Notice was served in September of 2017, I find that Section 51 (2) of the Act that was in force prior to May 17, 2018, stipulates that a landlord must pay the tenant, in addition to the one month's rent in compensation, an amount that is equivalent to two times the monthly rent if steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least six months' duration.

I find that the second page of the Two Month Notice that was served to the tenant from the landlord and provided in evidence also indicates the same information regarding the landlord being responsible to pay an amount equal to double the monthly rent if the landlord does not do what they have stated they would do within a reasonable period of time for at least six months.

I find that the tenant has provided sufficient evidence to demonstrate that landlord did not take any steps to move into the rental unit and did not actually use the rental unit for the stated purpose on the Two Month Notice. I accept the tenant's evidence which

indicates that there are new occupants in the rental unit, who are not the owner of the rental unit or close family members of the landlord.

Based on above, I find that the landlord is obligated to compensate the tenants as required under section 51 (2) of the *Act* that was in force prior to May 17, 2018. Therefore, I find the tenants are entitled to a monetary award in the amount of \$1,576.24, the equivalent of two month's rent payable under the tenancy agreement.

As the tenants are successful in this application, I find the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary order in the favour of the tenants as indicated below;

Item	Amount
Two Months' Rent Compensation	\$1,576.24
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$1,676.24

The tenants are 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: October 05, 2018

Residential Tenancy Branch