



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMPRESA PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

On January 26, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing and M.P. attended as an agent on behalf of the Landlord. All in attendance provided a solemn affirmation.

M.P. indicated that his property management company was no longer representing the owner of the property and has no financial or management responsibilities with respect to this rental unit. Thus, they should not be listed as a Respondent on the Application. However, he stated that the current property management company refused to attend the hearing and he attended on behalf of the owner as a favour. As per this discussion and information provided by M.P., the Application was amended to include the owner of the rental unit and his company as the appropriate Respondents in this matter.

The Tenants advised that they served the Notice of Hearing package, including their evidence, to the Landlord by registered mail on January 31, 2018 and M.P. confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

M.P. advised that he served his evidence to the Tenants by posting it to their door on August 18, 2018; however, the Tenants stated that they never received this package as they had moved from this address. M.P. suggested that it was their duty to let him know that they have moved. As this evidence was not served on the Tenants in compliance

with Rule 3.15 of the Rules of Procedure, this evidence was excluded from the hearing. However, M.P. provided testimony with respect to this evidence.

During the hearing, with respect to the Tenants' Application seeking compensation for moving expenses and storage costs, I advised the Tenants that the *Act* does not provide compensation for such claims. As such, I dismissed this portion of the Tenants' claims in their entirety.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the issuance of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

All parties agreed that the tenancy started on July 1, 2017 as a month to month tenancy, and the tenancy ended when the Tenants vacated the premises on January 31, 2018. Rent was established at \$1,200.00 per month, due on the first of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were also paid.

All parties agreed that the Notice was served to the Tenants in person on November 28, 2017 and the reason the Landlord checked off on the Notice was because "The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant." The effective date of the Notice was January 31, 2018.

The Tenants advised that after receiving the Notice, they made inquiries to the city building department with respect to whether the Landlord had the necessary permits and discovered that the permits for demolishing the rental unit were not approved. The Tenants advised that they filed this Application to dispute the Notice, to request more

time to dispute the Notice, and to request compensation as the Landlord did not use the property for the stated purpose on the Notice. The Tenants stated that this was a wrongful eviction as the city advised them that the permits were not issued and the property is still currently standing. The Tenants advised that as per the Notice, they vacated the rental unit on January 31, 2018.

M.P. took issue with the Tenant's Application as the Tenants made their Application to dispute the Notice outside of the legislated requirements. As well, he stated that the Tenants prematurely applied for two months' compensation owed under the Notice because none of the parties would have known that the rental unit would not have been demolished at the time the Tenants made the Application. As such, he asserted that this Application should be dismissed and the Tenants should subsequently make a separate Application seeking the compensation they believe they are owed.

M.P. submitted that the city building department approved the owner's application to demolish the rental unit and they provided the owner with a permit number. M.P. was then informed by the owner to serve the Notice. He stated that the owner received a demolition permit from the city but he does not know why the owner did not receive a development permit. As such, without a development permit the owner was not able to proceed with re-construction on the site of the rental unit and subsequently decided against demolishing the property.

M.P. advised that the owner asked him if he wanted the rental unit back in their management portfolio; however, M.P. refused this offer and a new property management company was hired to re-rent the property. He indicated that the new property management company contacted the Tenants with respect to re-renting the rental unit in May 2018.

Analysis

With respect to M.P.'s objection to the Tenants' Application, the issues I have before me pertain to the compensation aspect of the Notice. While there was some dispute with respect to the Tenants' request to cancel the Notice, as the Tenants were outside the legislated time frame to dispute the Notice, as they had vacated the rental unit already, and as this issue was not before me in the Application, this was not an issue that I needed to consider. As such, I proceeded with the hearing based on the compensation request under the Notice.

Regarding M.P.'s belief that the Tenants filed this Application for compensation prematurely and should re-apply, while the Tenants may have made the Application before anyone knew that the property would not be used for the stated purpose, it is not clear to me how this would be prejudicial to proceed with the hearing, especially in light of the fact that the Respondents were provided with and made aware of the compensation claim when served with the Notice of Hearing package. As such, I proceeded with hearing the merits of the Tenants' Application.

With respect to the Tenants' claim for two-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

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.

When reviewing the totality of the evidence, based on the undisputed testimony of both parties, there is no evidence before me that the owner demolished the rental unit, or renovated or repaired the rental unit in a manner that required the rental unit to be vacant. Furthermore, the evidence is that the owner took steps to have the rental unit re-rented soon after the effective end date of the tenancy. Consequently, I am satisfied that the owner has failed to use the rental unit for the stated purpose and that the Tenants have substantiated their claim that they are entitled to a monetary award of double the monthly rent pursuant to Section 51 of the *Act*. I find that the Tenants are entitled to compensation as set out in Section 51 of the *Act* in the amount of **\$2,400.00**.

As the Tenants were successful in their claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Double the monthly rent	\$2,400.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,500.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$2,500.00** 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: September 5, 2018

Residential Tenancy Branch