



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 tenant's 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 from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord represented herself with assistance.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution dated May 13, 2018 and evidence. The tenant confirmed receipt of the landlord's evidentiary materials. Based on the undisputed evidence I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy ended on April 1, 2018 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated February 1, 2018 (the "2 Month Notice"). The rent at the end of the tenancy was \$720.00 payable on the first of each month.

The 2 Month Notice provides that the reason the tenancy is ending is that the rental unit would be occupied by the landlord or a close family member. The landlord testified that they intended for their adult child to reside in the rental unit but due to unforeseeable changes in circumstance that did not happen.

The tenant seeks a monetary award of \$8,840.00 for the following items:

Item	Amount
12 months x \$720.00	\$8,640.00
Filing Fee	\$100.00
Filing Fee for Previous Withdrawn Application	\$100.00
TOTAL	\$8,840.00

Analysis

The *Interpretation Act* provides that amendments to an Act come into force at the beginning of the day of commencement. Legislative changes were made to the *Act* effective May 17, 2018. These changes are not retroactive. Therefore the amendments to the Act do not apply to this application which was filed on May 13, 2018 in regards to a 2 Month Notice dated February 1, 2018.

Section 51(2) of the *Act*, as it was prior to May 17, 2018, states 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.

The *Act* does not provide that the landlord may be excused from paying the tenant the amount required in the presence of extenuating circumstances.

In the 2 Month Notice the landlord indicated that the tenancy is ending as the rental unit would be occupied by the landlord or a close family member. The undisputed evidence of the parties is that neither the landlord nor their close family member occupied the rental unit. The landlord gave evidence that a number of circumstances outside of their control prevented the family member from occupying the rental unit as they intended.

The landlord submits evidence that the rental unit was not occupied by a close family member due to circumstances outside of their control. While I accept the landlord's undisputed evidence, I find that these circumstances do not affect the tenant's right to compensation under section 51 of the *Act*, as it was prior to the legislative changes of May 17, 2018.

The *Act* is clear in that a tenant is entitled to a monetary award if steps have not been taken to accomplish the stated purpose or the rental unit is not used for that stated purpose within a reasonable period after the effective date of the notice. In the case at hand the undisputed evidence provided is that the property was not occupied by the landlord or a close family member. Accordingly, I find that the tenant is entitled to a monetary award of \$1,440.00, double the monthly rent for this tenancy in accordance with section 51(2) of the *Act*.

As the tenant was successful in their application they may also recover the \$100.00 filing fee.

I find there is no provision that would allow the tenant to recover the filing fee for an earlier application that was withdrawn. Consequently, I dismiss this portion of the tenant's claim.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,540.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the

landlord fail to comply with this Order, the 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: November 5, 2018

Residential Tenancy Branch