



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

On July 17, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing and B.M. attended the hearing as agent for the Landlord. All parties provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package to the Landlord by registered mail on July 18, 2018 and the Landlord confirmed that this package was received. 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.

They also advised that they served the Landlord their evidence by registered mail on October 30, 2018, which included a DVD with digital evidence. The Landlord confirmed receipt of this package and that he was able to view the video evidence and listen to the audio evidence. This evidence was served within the timing requirements in accordance with Rule 3.14 of the Rules of Procedure. As the Landlord confirmed that he was able to review all the evidence, I am satisfied that the Landlord was sufficiently served with the Tenant’s evidence and this evidence was accepted and considered when rendering this decision.

The Landlord advised that his evidence was served to the Tenants by registered mail on November 9, 2018. The Tenants acknowledged that they received this evidence and that they were prepared to respond to it. While the service date of the Landlord’s evidence did not comply with the timing requirements of Rule 3.15 of the Rules of Procedure, as the Tenants were prepared to respond, I am satisfied that it would be

appropriate to accept and consider the Landlord's evidence when rendering this decision.

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 Notice?
- Are the Tenants entitled to a Monetary Order for other compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that tenancy started on February 1, 2015 and the tenancy ended when the Tenants vacated the premises on March 4, 2018. Rent was established at \$900.00 per month and was due on the first of each month. A security deposit of \$500.00 was also paid, even though this exceeded the maximum amount permitted to be collected pursuant to Section 19 of the *Act*.

The Tenants submitted that they received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on December 29, 2017 and the reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The Landlord indicated on the Notice that the effective date of the Notice was February 28, 2018.

However, the Tenants advised that after they vacated the rental unit, the Landlord did not use the property for the stated purpose. The Tenants are seeking compensation allowed in the amount equivalent to two months' rent **(\$1,800.00)** as they were served the Notice and the Landlord failed to use the rental unit for the stated purpose within six months after the effective date of the Notice.

The Landlord stated that they cleaned and commenced renovations on the rental unit immediately after the Tenant vacated. He advised that he was going to move in to the rental unit with his fiancée once the renovations were complete. The renovations took approximately two to four weeks to complete. However, even though the Landlord was fully intending on moving in, he was able to purchase a property in May, so he moved there instead. He stated that they advertised, looking for new tenants and a new tenant moved into the rental unit in mid-April.

The Tenants are also seeking compensation in the amount of **\$1,000.00** as they submit that the Landlord bothered them many times since February 2017. They stated that there was a dispute over the use of the Tenants' washer and dryer, that their internet cable was cut three, separate times, and that their car tire was intentionally damaged with a nail. They referenced their digital evidence with respect to these issues and stated that the Landlord does not deny being responsible for these issues. The Tenants stated that they could not indicate how they calculated their loss for these issues to be equivalent to the \$1,000.00 that they were seeking.

The Landlord advised that these were serious allegations that the Tenants were proposing, and significant evidence is critical to substantiate such claims, which the Tenants did not provide. The Landlord stated that he was not involved with the washer and dryer issue and that the Tenants were allowed to view the security video footage with respect to the internet cutting; however, nothing was found.

Finally, the Tenants are also seeking compensation in the amount of **\$60.47** as they submit that the tenancy agreement indicates that they were responsible for paying 30% of the hydro and the gas bills but the Landlord calculated these amounts improperly and overcharged them. They referred to documentary evidence outlining the miscalculations and the actual, corrected totals.

The Landlord questioned why this was not brought up at the time as this would have been addressed and paid.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this decision are below.

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 the Notice was served on December 29, 2017 and Section 51 of the Act at the time the Notice was served 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.

I also find it important to note that Section 51 of the Act changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 (2) *Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

(a) 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

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) *The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

When reviewing the totality of the evidence before me, at the time the Notice was served, the applicable *Act* states that once the Notice is served, the Tenants are entitled to the amount of two months' rent if the Landlord does not use the property for the stated purpose on the Notice. This provision is irrespective of whether the Notice was served in good faith as this requirement pertains to the updated legislation. Had this Notice been served after the legislation changed on May 17, 2018, Section 51(3) allows for consideration of the compensation to be excused in extenuating circumstances.

Based on the undisputed testimony of both parties, the consistent evidence before me is that the rental unit was re-rented in April 2018. Consequently, I am satisfied that the Landlord 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 **\$1,800.00**.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Tenants' claim for compensation in the amount of \$1,000.00 as they submit that the Landlord bothered them many times, when reviewing the totality of the evidence, I do not find that the Tenants have provided any compelling or persuasive evidence to support their claims that the Landlord was responsible for these issues. I do not find that their position that the Landlord's absence of acknowledging being responsible indicates that the Landlord was culpable for these claims. I find the Tenants' claims to be mostly based on speculation rather than definitive evidence. Furthermore, the Tenants have not specifically outlined how much compensation they are seeking for each issue nor have they supported the value of that loss. Consequently, I dismiss the Tenants' claims with respect to these issues without leave to reapply.

Finally, with respect to the Tenants' claims for compensation in the amount of \$60.47 for overpayments of the hydro and the gas bills, as the Landlord does not deny that these may have been a miscalculation and as the Landlord does not refute that this might be owed, I am satisfied that the Tenants have established a claim for compensation in the amount of **\$60.47**.

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

Pursuant to Sections 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
Compensation for serving the Notice in bad faith	\$1,800.00
Compensation for overpayments of utilities	\$60.47
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,960.47

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,960.47** 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: November 28, 2018

Residential Tenancy Branch