



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL; MNSD, MNDCT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38;
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of the security deposit, pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

The "first hearing" on October 22, 2018 lasted approximately 58 minutes and the "second hearing" on December 7, 2018 lasted approximately 47 minutes.

The landlord, the landlord's agent and the tenant attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. At both hearings, the landlord confirmed that his agent had permission to speak on his behalf.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on October 22, 2018 was adjourned by consent of both parties, due to document service issues. By way of my interim decision, dated October 22, 2018, I adjourned both parties' applications to the second hearing date of December 7, 2018. I also provided service directions to both parties to provide an index, as noted in my interim decision. Both parties confirmed receipt of my interim decision after the first hearing. No testimony was heard from either party at the first hearing.

At the second hearing, both parties confirmed receipt of the other party's application for dispute resolution hearing package and index, as noted in my interim decision. In accordance with sections 88, 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application and required index.

At the outset of the second hearing, the tenant confirmed that she was not seeking to recover her security deposit of \$1,000.00 plus interest from the landlord and that she agreed to him retaining it towards his monetary order. Accordingly, this portion of the tenant's application is dismissed without leave to reapply. The tenant confirmed that she was reducing her monetary claim on this basis, from \$5,500.00 to \$4,500.00.

Issues to be Decided

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for his application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 1997 with the landlord's father. The landlord took over the rental unit as of August 1, 2016, when

the parties signed a written tenancy agreement. The tenancy ended on December 6, 2017. Monthly rent of \$2,250.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant did not provide a written forwarding address to the landlord. The landlord did not have any written permission to keep the tenant's security deposit. The landlord filed his application to keep the deposit on April 23, 2018.

The landlord seeks a monetary order of \$1,469.56 plus the \$100.00 filing fee. He seeks \$1,324.40 for disposing of the tenant's goods after she vacated the rental unit and \$145.16 for unpaid rent from December 4 to 5, 2017. He claimed that he was not seeking rent from December 1 to 3, 2017, despite the fact that the tenant did not pay it. The tenant verbally agreed to pay the landlord \$1,469.56 during the hearing and stated that the landlord could keep her security deposit plus interest to account for part of the monetary order.

Both parties agreed that the tenant vacated the rental unit pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 21, 2017 ("2 Month Notice"). The notice has an effective move-out date of October 31, 2017. The tenant confirmed that she received the notice when it was posted to her door on August 22, 2017.

The tenant seeks compensation under section 51(2) of the *Act* for double the monthly rent of \$2,250.00, totalling \$4,500.00. The tenant claimed that because the landlord has not used the rental unit for the stated purpose on the 2 Month Notice, she is entitled to compensation. A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice is:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The landlord said that he issued the 2 Month Notice to the tenant in good faith, after he sold the rental unit on August 16, 2017. He said that he received written notice from the purchasers that they wanted to move into the rental unit. The landlord provided a contract of purchase and sale ("CPS"), the "addendum" to the contract, and the "buyer's request" to seller. The CPS indicates in clauses 3 and 5 that there is an existing tenancy and the purchaser requires vacant possession of the rental unit. The buyer's request, which is signed by both purchasers, indicates that the purchasers are making a

written request of the landlord to issue the tenant with a notice under section 49 of the *Act*, for vacant possession, because the purchasers or close family members intend in good faith to occupy the rental unit. The landlord said that he did not follow up with the purchasers to determine whether they moved into the unit and that it is not his obligation to do so because he fulfilled the purpose of the 2 Month Notice in good faith.

The tenant disputes the landlord's claim, stating that the landlord did not use the rental unit for the purpose in the 2 Month Notice. She said that she went by the rental unit every month since she moved out. She maintained that the house was vacant, as the trash bins were empty in the garage and the grounds were not kept up. She said that a "for sale" sign was at the unit in March 2018 and then it was sold. She stated that new tenants began renting the unit sometime in April or May 2018, as per the neighbours, who she said were witnesses but unavailable to attend the second hearing to testify.

Analysis

Landlord's Application

I award the landlord \$1,469.56 in compensation, as the tenant agreed to pay this amount during the hearing.

Since the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,000.00. Over the period of this tenancy, \$131.75 in interest is payable on the deposit from the start of the tenancy on January 1, 1997 and the date of this decision on December 12, 2018. The interest was calculated using the RTB online deposit interest calculator. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit plus interest, totalling \$1,131.75, in partial satisfaction of the monetary award. I issue a monetary order of \$437.81 to the landlord for the balance owing by the tenant.

Tenant's Application

Subsection 49(5) of the *Act* states that a landlord may end a tenancy in respect of a rental unit where the landlord sells the unit, all of the conditions for sale have been

satisfied, and the purchaser asks the landlord in writing to give notice to the tenant to end the tenancy so that the purchaser or a close family member can occupy the unit in good faith.

Section 51(2) of the Act establishes a provision whereby a tenant is entitled to a monetary award equivalent to double the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. Section 51(2) states:

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 make the following findings, on a balance of probabilities, based on the testimony and written evidence of both parties. The tenant vacated the rental unit on December 6, 2017, pursuant to the 2 Month Notice. The landlord sold the rental unit and all conditions for the sale were satisfied. The landlord issued the notice because the purchaser asked him to do so, in writing, in order to move in. The landlord provided a written copy of this request. The landlord does not know whether the purchaser or a close family member moved in. It is not the landlord's obligation to find out. The landlord issued the notice for the reason stated in the 2 Month Notice.

The tenant speculates that no one was living in the rental unit after she moved out, that it was sold and that new renters are now living there. The tenant saw a "for sale" sign at the property and then claimed that it was sold but she does not know when. The tenant said that she received information from other neighbours but she did not provide witness statements or verbal testimony from them. It is the applicant's burden of proof to show that the landlord failed to use the rental unit for the purpose in the 2 Month Notice; I find that the tenant has failed to meet this burden.

On a balance of probabilities and for the reasons stated above, I dismiss the tenant's application for compensation of double the monthly rent of \$4,500.00 under section 51(2)(b), without leave to reapply.

Conclusion

I order the landlord to retain the tenant's entire security deposit plus interest, totalling \$1,131.75, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$437.81 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The tenant's entire application is dismissed without leave to reapply.

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: December 12, 2018

Residential Tenancy Branch