



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act* and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence and stated that he had sent a copy of his evidence to the tenant's forwarding address by registered mail – but it was returned to him.

The tenant stated that he had moved and had provided the landlord with a copy of his new address by placing a note near the landlord's front door. The landlord denied having received the new address. I have not used the landlord's documentary evidence but have considered the landlord's verbal testimony in the making of this decision. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

On August 07, 2018, these parties had attended a hearing which was convened to address the tenant's application to dispute a notice to end tenancy for landlord's use of property. However, since the tenant had already moved out, the Arbitrator dismissed the tenant's application.

Issues to be Decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started in February 2018. The monthly rent was \$700.00 due on the first of each month. The tenant moved out on June 29, 2018 pursuant to a notice to end tenancy for landlord's use of property. The tenant agreed that he received from the landlord compensation in the amount of one month's rent.

On May 28, 2018, the landlord had served the tenant with a two month notice to end tenancy for landlord's use of property. The tenant filed a copy of the notice to end tenancy. The reason for the notice was that the landlord or a close family member of the landlord intended to move into the rental unit. On page 2, in addition to the check marked box stating the reason for the notice, there was a hand written reason for the notice to end tenancy. This was crossed out. The landlord stated that the handwritten reason was that the rental unit was to be decommissioned as per the local city bylaw.

The landlord stated that the tenant had altered the notice to end tenancy and had crossed out the hand written reason to end tenancy and had placed a check mark in the box that states that the landlord or a close family member intended to move into the rental unit. The tenant denied having altered the notice to end tenancy.

The landlord testified that the tenant had made application for compensation and his application was dismissed at the previous hearing. The tenant denied having made application for compensation and provided me with a file number for the previous hearing. I looked at the decision and evidence that was uploaded to the electronic system on the previous application of the tenant. The decision clearly outlines the remedies that the tenant had applied for and compensation was not one of them. In addition, the notice to end tenancy is identical on both applications of the tenant.

I informed the landlord that if he found that the tenant had filed a notice that had been tampered with; he needed to file his own copy of the notice for comparison. The landlord was served a copy of the tenant's evidence prior to both hearings and the landlord did not file any documents to support his testimony that the notice to end tenancy had been tampered with.

The landlord testified that sometime in January 2018, he received a letter from the local City municipality office informing him that he was required to decommission the rental unit as it was not a legal suite. The landlord stated that he served the notice to end tenancy on May 28, 2018, for the purpose of decommissioning the rental unit.

However, the landlord agreed that he listed the home for sale on May 29, 2018, the day after he served the notice. The tenant provided copies of the listing as advertised.

The landlord stated that he listed the home for sale for the sole purpose of obtaining financing and that he had no intention of selling the unit. The landlord also agreed that he did not move into the rental unit. The landlord stated that the suite was decommissioned and approved of by the city on July 23, 2018.

The tenant has applied for compensation pursuant to section 51 in the amount of 12 months' rent plus \$100.00 for the filing fee.

Analysis

Based on the documents filed into evidence and on the testimony of both parties, I find that the landlord served the tenant with a notice to end tenancy for landlord's use of property. Even if I accept the landlord's testimony that the purpose of the notice was to decommission the rental unit, the landlord could have served the tenant with a one month notice to end tenancy which would be the appropriate notice for a reason such as this.

The reason for the notice as check marked on the notice to end tenancy is that the landlord or a close family member intended to move into the rental unit. The landlord agreed that neither he nor a close family member moved into the rental unit. The landlord also agreed that he listed the property for sale the day after he served the tenant with the notice to end tenancy.

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement.

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 as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the reason for the notice was that the landlord or a close family member intended to move into the rental unit

Based on the testimony of the landlord, I find that he did not accomplish the stated purpose for ending the tenancy under section 49 and therefore he must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement. The monthly rent was \$700.00 and therefore the landlord must pay the tenant \$8,400.00 as compensation.

Since the tenant has proven his case he is also entitled to the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$8,500.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents 12 months' rent plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$8,500.00**.

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 07, 2018

Residential Tenancy Branch