



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

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 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

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.

As both parties were present, service of documents was confirmed. The tenant testified that he served the purchasers individually with the notice of this hearing and approximately 91 pages of evidence on September 5, 2018 by Canada Post registered mail, which was confirmed received by the purchaser. The tenant testified that he served the purchasers individually with a second package of evidence on November 1, 2018 by Canada Post registered mail, which was confirmed received by the purchasers. The purchasers testified that they served the tenant with their evidentiary materials on December 26, 2018 by Canada Post registered mail, which was confirmed received by the tenant.

Based on the undisputed testimonies of the parties, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the purchaser's failure to comply with the provisions of section 51 of the *Act* requiring the use of the rental suite for the purposes stated on the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 13, 2017?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A copy of the written tenancy agreement was not submitted into evidence; however, the terms of the tenancy were confirmed as follows:

- The tenancy began September 1, 2009, as a one-year fixed term tenancy. Once the fixed-term ended, the tenancy continued on a month-to-month basis.
- Monthly rent, payable on the first day of the month, was \$900.00 at the end of the tenancy. The tenant submitted copies of rent receipts as proof of the rent amount paid during the tenancy.

The tenant testified that on October 17, 2017 he was personally served a Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) by his landlord, requiring him to vacate the rental unit by January 2, 2018. The Two Month Notice submitted into documentary evidence by the tenant stated the reason for ending the tenancy as:

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 tenant confirmed that he did not dispute the Two Month Notice and moved out on January 2, 2018 in accordance with the effective vacancy date of the Two Month Notice.

The tenant alleged that the purchaser did not use the property for this stated purpose but rather that the purchaser re-rented the rental unit for rent at a higher monthly rent.

The purchaser testified that at the time the Two Month Notice was issued, he had intended in good faith to have his parents live in the rental unit. He stated that they faced delays in selling their property overseas and were unable to move in as planned. In order to mitigate his costs, the purchaser confirmed that they decided to rent out the rental unit.

The purchaser confirmed that he advertised the rental unit on Facebook and Craigslist by the first or second week of January 2018, and acquired new tenants for the rental unit a few days before the end of January 2018. The purchaser testified that the new tenants signed a one-year fixed-term tenancy agreement beginning February 1, 2018 at a monthly rent of \$1,650.00.

The tenant's claim also includes a request for compensation of \$8,940.00 for the difference in the amount of rent paid in his previous tenancy to the higher rent he now pays in his current fixed-term tenancy.

The tenant has also claimed \$3,500.00 in aggravated damages due to the surrender of his two cats to the SPCA as pets were not permitted at his current rental unit.

Analysis

The relevant sections of the *Act* are provided below as the legislation was written and in force at the time the tenant was issued the Two Month Notice. Recent legislative changes to these sections of the *Act* are not retroactive.

Section 51 of the *Act* stated, in part, as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

...

(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.*

[My emphasis added]

In this matter, there was no dispute that the purchaser re-rented the rental unit to a new tenant without occupying the rental unit for at least six months. These facts were acknowledged and confirmed by the purchaser.

The purchaser claimed that his parents were unable to occupy the rental unit due to delays selling their home overseas. Due to this delay, the purchaser decided to re-rent the rental unit rather than have it sit empty for several months. The purchaser testified that the new tenants were soon evicted for failure to pay rent and the rental unit was re-rented once again, this time to students. As confirmed by the purchaser's testimony, he has never used the rental unit for the stated purpose of being occupied by his close family.

Although the purchaser testified to their good faith intention to use the rental unit as a residence for their parents at the time the Two Month Notice was issued, the purchaser's intention at the time the notice was issued is not relevant to a determination in this matter. Under section 51 of the *Act* as it was written at the time, the only consideration is whether the rental unit was actually used for the stated purpose provided on the Two Month Notice.

Therefore, based on the undisputed facts provided through the testimony and evidence of both parties, I find that the tenant has presented sufficient evidence to prove his claim, on a balance of the probabilities, which means more likely than not, that the purchaser did not use the rental unit for the purposes stated on the Two Month Notice, in contravention of section 51(2)(b) of the *Act*.

Recent legislative changes to the *Act* implemented in May 2018 allow an Arbitrator to consider extenuating circumstances in applications for compensation pertaining to section 51 of the *Act*, however, as explained earlier in this Decision, these legislative changes are not retroactive. Therefore, in this matter, the purchaser cannot rely on the

circumstances he has presented for failing to use the rental unit for the stated purpose as a reason to be exempted from the statutory compensation provisions pursuant to section 51(2) of the *Act*.

Accordingly, I find that the tenant is entitled to monetary compensation in accordance with the provisions of section 51(2) of the *Act*. The tenant's monthly rent payable under the tenancy agreement was \$900.00. Therefore, the monetary compensation is equivalent to double the monthly rent, for a monetary award of \$1,800.00.

As the tenant was successful in his claim, I find that he is also entitled to recover the cost of the filing fee in the amount of \$100.00.

The tenant has also sought compensation for the difference in the payment of rent between the tenancy which was ended as a result of the Two Month Notice, and his new fixed term tenancy, as damages resulting from the termination of the tenancy. Further to this, the tenant has sought compensation for aggravated damages as the tenant claimed he had to surrender his two cats to the SPCA when he was unable to find a new tenancy that would allow his pets.

Section 67 of the *Act* provides that an arbitrator may determine the amount of the damage or loss and order compensation to the claimant, if an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement.

The burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the tenancy agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must provide sufficient evidence to prove that they did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Section C of Residential Tenancy Policy Guideline #16. Compensation for Damage or Loss examines the issues of compensation in detail, and explains as follows:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide

evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

The tenant testified that he is incurring additional monthly rental charges as a result of the termination of this tenancy. The tenant's written submission stated that the tenant had initially applied to 30 rental units in his area, and then applied for another 17 to 18 rental units but was unable to find a rental unit under \$1,400.00 in his area, due to the low vacancy rental market in his area. At some point, the tenant found a rental unit, paid a deposit and awaited his application to be approved, only to be told on December 26, 2017, six days before the end of his tenancy that he was not approved.

As a result, the tenant made another rental application on December 28, 2017 and was accepted the following day for a rental unit requiring a one-year fixed term tenancy at a monthly rent of \$1,645.00 which did not allow pets or provide room for his children's outdoor play equipment.

The purchaser disputed the tenant's claim that there were no other rental options at a lower cost available in the rental market in that area.

I note that there was no evidence submitted by the tenant to show whether the tenant had other options available or whether this was the least expensive option or that no pet-friendly options existed, such as the listings for any of the rental units he applied for or that were listed for rent during the time the tenant was searching for a rental unit. The tenant did not provide any evidence regarding the dates of when he began his search or for how long he waited to hear back from the one application that seemed to put his search on hold until December 26, 2017.

The tenant bears the burden of proof on a balance of probabilities to prove their claim when the claim is disputed by the other party. In this case, the purchaser disputed the tenant's claim that there were not other rental options available to the tenant. I find that the tenant did not submit sufficient evidence to support his claim that he was diligent in taking action to search for and apply for rental units, that the rental unit he ended up taking was the least expensive available option, and that there were no pet-friendly rental options available. I also do not find that the delayed response to the tenant's application by the one rental provided, which seemed to place the tenant's search on hold until December 26, 2017, could be considered to have stemmed directly from the purchaser's contravention of section 51 of the *Act*. As such, I find that the tenant failed to present sufficient evidence to support his claim that he "acted reasonably to minimize that damage or loss", as required by section 67 of the *Act*. Accordingly, I dismiss the tenant's claim for compensation of \$8,940.00 and aggravated damages of \$3,500.00, without leave to reapply.

In summary, I find the tenant is entitled to a Monetary Order of \$1,900.00 as compensation for the purchaser's contravention of section 51 of the *Act*.

Conclusion

I issue a Monetary Order in the tenant's favour against the purchaser in the amount of \$1,900.00 as compensation for the purchaser's contravention of section 51 of the *Act* and for the recovery of the \$100.00 paid by the tenant for the cost of the filing fee.

The tenant is provided with this Order in the above terms and the purchaser must be served with this Order as soon as possible. Should the purchaser 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: January 14, 2019

Residential Tenancy Branch