



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT 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 sections 51 and 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding.

I confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided undisputed evidence that he sent the landlord the Application for Dispute Resolution hearing package by registered mail on November 21, 2018. The tenant provided a Canada Post tracking number and receipt for the mailing. The tenant advised me that the package was sent to the address provided to him on the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("Notice"). I confirmed the address on the Canada Post receipt matched the address shown on the Notice. The tenant advised that the package was returned to him as unclaimed by Canada Post. Despite being returned by Canada Post, I find the landlord is deemed served with the Application for Dispute Resolution hearing package on November 26, 2018, five days after the registered mailing, pursuant to section 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord for a breach of the terms of the tenancy agreement or the *Act*?

Is the tenant entitled to recover the \$100 filing fee for this application from the landlord?

Background and Evidence

The tenant lived with his family in the upper rental unit of a two-unit house. The tenant provided a copy of the tenancy agreement which indicates the one-year fixed term tenancy commenced on April 1, 2015 with monthly rent set at \$1,300.00 due on the first of the month. The tenancy continued on a month to month basis until the tenant received the Notice from the landlord on March 31, 2018. The effective date of the Notice was June 1, 2018, however the tenant vacated the rental unit on May 26, 2018.

In August of 2018, the tenant stopped by the rental unit and noticed a sign in the window of the upper unit indicating the unit was for rent. He took a photograph of the sign in the window, but the photograph was not submitted with the tenant's evidence.

On or about November 9, 2018, the tenant went back to the rental unit to see if there was any mail left behind for him. He met two men and asked them if they lived in the upper unit and how much they were paying for rent. They said they were living in the upper unit and were paying \$1,800.00 per month in rent. The tenant concluded that the landlord and/or the landlord's family are not living in the rental unit. The tenant seeks compensation, believing that the landlord ended the tenancy not for the reason in the Notice, but because he had the ulterior motive of obtaining significantly higher rent.

Analysis

Section 51(2) of the *Act* sets out financial compensation for a tenant when a landlord does not take reasonable steps to accomplish the purpose for which the tenancy was ended or fails to use the rental unit for the purpose the notice was given after the effective date of the notice. Does it matter if the reason for ending the tenancy was given in good faith? The Residential Tenancy Branch's Guideline (PG-50) 'Compensation for Ending a Tenancy' provides guidance to arbitrators, landlords and tenants on compensation for ending a tenancy.

PG-50 does not make any reference to good faith. It is arguably very clear in this Guideline that the arbitrator must consider whether reasonable steps were taken to accomplish the purpose of ending of the tenancy, whether or not the reason for ending the tenancy was issued in good faith. Below is the key section of the Guideline:

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

The landlord did not attend this hearing to dispute the tenant's evidence or testimony. Based on the tenant's undisputed testimony that the rental unit was advertised for rent and re-rented at a higher rent within six months of the effective date of the Notice, I find that steps have not been taken by the landlord, within a reasonable period after the effective date of the Notice, to accomplish the stated purpose for ending the tenancy. The tenant is entitled to compensation provided for in section 51(2) of the Act.

The Notice was given to the tenant on March 31, 2018. The tenant's compensation is bound by the provisions of the *Act* as they read on March 31, 2018. Section 51(2) of the *Act* provides compensation to the tenant in the equivalent of **double the monthly rent payable under the tenancy agreement**. I award the tenant a monetary order in the amount of \$2,600.00.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$2,700.00**. 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: February 5, 2019

Residential Tenancy Branch