



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and evidence submissions on file.

Issues

Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The tenancy began on July 1, 2015 with a monthly rent of \$2750.00 payable on the 1st day of each month. The parties renewed a series of fixed term lease agreements the last which was set to expire on June 30, 2018. The rental unit is a 3 bedroom basement suite. The landlord occupies the upper portion of the home.

On April 23, 2018, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of June 30, 2018. The landlord sent the Two Month Notice as an attachment to an e-mail by which they advised the tenant that due to financial reasons they needed to

move into the basement suite and rent out the upper portion of the home which could attract higher rent.

The tenant did not dispute the 2 Month Notice and vacated the rental unit on June 30, 2018.

The tenant is claiming an amount equivalent to twelve times the monthly rent as compensation for the landlord not using the rental property for their own use after issuing the Two Month Notice. The tenant is also claiming various other costs related to moving.

In support of her claim the tenant submitted advertisements of the basement suite posted on Craigslist as early as 1 month and 23 days after she vacated. The tenant submits the unit was advertised for a higher rent. The tenant submits that the landlord's own evidence supports that the basement suite was rented out to a new tenant.

The landlord H.A.M. provided testimony through his interpreter. The landlord testified that after the tenant vacated, they entered into a contract with a property management company to rent out the upper portion of the home but were not successful in renting it out. The landlord therefore had no choice but to rent out the basement again which was rented to a new tenant on October 15, 2018. The landlord testified they did move into the basement initially but then moved back upstairs.

Analysis

On the date the Two Month Notice was served on the tenant, Section 51 (2) of the Act stated that if 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 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.

On May 17, 2018 changes to the *Act* came into effect which changed the amount payable from a landlord to a tenant under section 51(2) of the *Act* from double the monthly rent payable to 12 months' rent. This change came into effect after the tenant received the Two Month Notice; therefore, the former provisions of section 51(2) of the *Act* apply to this dispute.

I find that the landlord's own evidence establishes that the landlord did not utilize the rental unit for the stated purpose of the landlord occupying it, for at least a 6 month period. The fact that the landlord may not have been able to rent out the upper portion does not take away the landlord's obligation under the Act. Perhaps, the landlord ought to have secured a tenancy for the upper portion before issuing a Two Month Notice to the tenant.

I allow the tenants claim; however, limit the award to an amount equivalent to double the monthly rent which is \$5500.00. I dismiss the tenant's claims relating to various other moving costs. Section 51(2) of the Act provides a specific amount of compensation in cases where the landlord does not carry out the stated purpose for ending the tenancy. The tenant's claims are restricted to this amount.

As the tenant was for the most part successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$5600.00.

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a Monetary Order in the amount of \$5600.00. 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 25, 2019

Residential Tenancy Branch