



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for \$10,000.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, a support person for the tenant, the landlord and legal counsel for the landlord ("counsel") attended the teleconference hearing. The tenant and landlord provided affirmed testimony and presented their evidence. Counsel provided a submission on behalf of the landlord. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the tenant entitled to any monetary compensation under the Act, and if so, in what amount?
- Is the tenant entitled to recovery of the cost of the filing fee under the Act?

Background and Evidence

Neither party provided a copy of the written tenancy agreement. The parties agreed that a fixed-term tenancy began on August 1, 2014 and eventually reverted to a month to month tenancy. The parties confirmed that the tenant vacated the rental unit on or above November 3, 2016, after being served with the 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice").

The reason stated on the 2 Month Notice is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenant was unable to confirm how he arrived at the amount of \$10,000.00 being claimed. As a result, I find that the tenant is seeking two month's compensation for the landlord allegedly failing to comply with the reason stated on the 2 Month Notice as the tenant writes in their application in part:

I was given a 2 month notice to move based on a family member moving in, stated as sister. After I moved out the house was prepared for demolition and demolished soon after. I had lived in the house approximately 15 years, 13 as the owner. I had to shut my business down for four days (lost income as well as I had to move myself and pay for help, also my new rent was almost double my old rent.

The tenant was advised that the tenancy was a residential tenancy so work-related costs would not be considered, nor was a monetary breakdown provided. As such, any work-related losses are dismissed without leave to reapply, due to insufficient details listed in the application as required by section 59 of the *Act*.

The landlord testified that it was their intention to move into the rental unit; however, after the landlord's contractor walked through the rental unit with the landlord on November 9, 2016, the landlord stated that the contractor estimated that the rental unit was significantly damaged and estimated that there was approximately \$35,000.00 to \$40,000.00 in repairs required. The landlord also stated that the single family home was sixty years old and that the tenant had performed unauthorized building inside the rental home which required repair. The landlord stated that the bathroom was missing flooring,

that there was significant damage throughout the rental home and that instead of repairing the home, it was demolished in February 2017 and completed in December 2017 and that during this time period the landlord continued to hold possession of the home and did not re-rent the rental unit. Furthermore, the landlord testified that he has resided in the rental unit since the work was completed in December 2017, and that the home is the landlord's principal residence. The landlord also confirmed that the home remains a single family home and was not converted into a duplex. In addition, the landlord confirmed he has not re-rented the rental unit at any time between when the tenancy ended in 2016 and the time of this hearing which was held on February 25, 2019.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Firstly I have considered section 51 of the *Act* as it read on August 9, 2016 as the parties were bound by the *Act* as it read on the date in which the 2 Month Notice was issued, which states:

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

Emphasis added

In addition to the above, as the reason indicated on the 2 Month Notice stated "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse" I have also considered the definition of the word "occupy". I have referred to the Black's Law Dictionary sixth edition for the legal meaning of occupy.

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

Emphasis added

I find there is insufficient evidence before me that the landlord re-rented the rental unit to another tenant after issuing the tenant a 2 Month Notice. In addition, I am satisfied that the landlord became aware of significant damages after the tenancy ended and that during the time period between the date the tenancy ended in November 2016 and the date of the hearing, February 25, 2019, there is no evidence before me that the landlord did not hold possession of the rental unit during the entire time period. I also note that section 51(2)(b) of the *Act* only requires the landlord to comply with the reason stated for a minimum of six months; however, the landlord has held possession of the rental unit for the entire time period since the tenancy ended to the date of the hearing. As a result, I find the landlord has met the definition of occupy as defined in the Black's Law Dictionary as the landlord took possession back of the rental unit in November 2016 and has held possession of the premises without re-renting the rental unit. Black's Law Dictionary does not define occupy as to reside or to live.

Therefore, I find that the tenant has provided insufficient evidence to support that the landlord has breached the *Act*, regulation or tenancy agreement which is the first test of the test for damages or loss. Given the above, the tenant's application is **dismissed without leave to reapply** due to insufficient evidence.

Given that the tenant's application has failed, I do not grant the tenant the recovery of the cost of the filing fee.

Conclusion

The tenant's claim has no merit and is dismissed without leave to reapply, due to insufficient evidence.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: March 11, 2019

Residential Tenancy Branch