



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OT MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was represented by their agent and assisted by their family member. The co-landlord confirmed they were authorized to speak on behalf of both named landlords.

As both parties were in attendance service of documents was confirmed. Both parties testified that they had been served with the respective materials. Based on the testimonies I find that each party was duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in March, 2017. The monthly rent was \$925.00 payable on the first of each month.

On February 2, 2018 the rental unit was damaged in a fire and the tenant could not reside in the rental suite. The tenant was only able to return to the unit in July, 2018. The tenant paid the full monthly rent for February, 2018 in the amount of \$925.00. No rent was paid or payable for the months of March through July, 2018 when the suite was uninhabitable. The tenant seeks the return of the rent paid for the period of February 2018 when the suite could not be occupied. The tenant calculates the amount of overpaid rent for that month to be \$860.00.

This tenancy ended on September 30, 2018 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated July 31, 2018. The first page of the 2 Month Notice was submitted into documentary evidence. The tenant submits that the reason given on the 2 Month Notice was that all of the conditions for the sale of the property had been satisfied and the landlord has received a request from the purchaser to issue the notice.

The tenant testified that after moving out they discovered that the landlord had maintained ownership of the property and had merely rented the suite out to new tenants. The landlord confirms that the property has not yet been sold but that it is listed for sale.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I accept the evidence of the parties that the tenant paid the full amount of rent for February 2018 in the amount of \$925.00. I accept the evidence that due to a fire the rental suite could no longer be occupied for several months from February 2, 2018 onwards. Accordingly, I find that there was a reduction in the value of the rent for the month of February, 2018 as the suite could not be used at all. I accept the tenant's

calculation that the monetary amount of the loss is \$860.00. Accordingly, I issue a monetary award in that amount.

Section 51(2) of the *Act* states if:

51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) Steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) The rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The tenant submits that they were issued a 2 Month Notice which set out that the reason for this tenancy to end was that the all of the conditions for sale of the rental suite had been satisfied and the purchasers had provided written notice to the landlord requiring vacant possession. The landlord testified that the rental building has not yet been sold as at the date of the hearing but that it is listed for sale.

However, the tenant has only submitted the first page of the 2 Month Notice into documentary evidence and has failed to submit the portions of the Notice where the landlord provides the reasons for the notice. In the absence of any documentary evidence showing the reasons for the 2 Month Notice I find that there is insufficient evidence in support of the tenant's present claim. Consequently, I dismiss this portion of the tenant's claim with leave to reapply.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$860.00 against the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the balance of the tenant's application with leave to reapply.

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: March 25, 2019

Residential Tenancy Branch