

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* ("Act") for:

- authorization to recover a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord attended the hearing by way of conference call. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute and evidentiary package. The landlord is found to have been duly with both the application for dispute and the tenant's evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award? Can the tenant recover the filing fee?

Background and Evidence

The tenant explained the tenancy began in January 2016 and ended on September 15, 2018. Rent was \$1,000.00 per month and security deposit of \$475.00 paid at the outset of the tenancy was returned.

The tenant has applied for a monetary award of \$12,500.00 along with a return of the filing fee. The tenant said the landlord failed to use the property as indicated on the move-out notice. The tenant explained that on August 1, 2018 she was given an eviction notice. The tenant supplied this document in her evidentiary package. A review of this notice shows a document drafted by the landlord titled, "2 Month Notice to End Tenancy for Personal Use of Property." This document states as follows, "I hereby giving (sic) you two months' notice that the undersigned is terminating the month to month tenancy of the premises located at [redacted] (Ground Floor Basement), under the agreement lease dated 'Jan 1, 2016' between the undersigned as landlord V.S. and

K.M. as tenant. This termination is to be effective on [date when tenant must move out of the rental unit] 1 OCT 2018.”

This document then goes on to list terms of the move out and the responsibilities the tenant had related to cleaning and repairing damages.

The tenant said the landlord had informed her that he required the rental unit for his personal use; however, almost immediately following her move-out, the tenant said she discovered the rental unit advertised on Craigslist for an increased rent amount. She said she also found ads on Facebook showing the unit for rent, again at a higher rental rate. Additionally, the tenant alleged the landlord failed to provide her with compensation in the form of one month’s free rent as she felt she was entitled.

The landlord maintained that he had in fact used the rental unit for his own personal use; however, he said that due to some unforeseen problems he was forced to re-rent the suite. The landlord said he undertook some renovations in the unit and then re-rented the suite after it could no longer use the property as he had originally intended.

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. In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award.

The tenant argued that she was entitled to compensation under the *Act* because the landlord had failed to use the property after having indicated that he required vacant possession for his own personal use.

Section 51 of the *Act* states, “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.” After considering the testimony of the tenant, and after having reviewed the evidence submitted at the hearing, I find no

evidence that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant acknowledged that she vacated the suite after having received a document from the landlord dated July 31, 2018 and signed on August 1, 2018. A review of this document submitted into evidence by the tenant shows that this "eviction notice" was drafted by the landlord himself. I find it does not meet the requirements to be considered a valid Notice to End Tenancy pursuant to sections 44 or 49 of the *Act* and I find the tenant was under no obligation to vacate the property after having received this document from the landlord. Accordingly, the tenant is found to have vacated the property under her own volition and is therefore not afforded any rights under the *Act*.

The fact that the landlord did not use the property as indicated on his July 31, 2018 letter is inconsequential if no valid notice to end tenancy was ever issued. Compensation is only available to persons who have been served with a notice under section 49 of the *Act*. Section 52(e) of the *Act* notes, "In order to be effective, a notice to end tenancy must be in writing and must be when given by a landlord, be in the approved form." For these reasons, I dismiss the tenant's application for a monetary award.

As the tenant was unsuccessful in her application, she must bear the cost of her own filing fee.

Conclusion

The tenant's application for a monetary award is dismissed without leave to reapply.

The tenant must bear the cost of her own filing fee.

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 26, 2019

Residential Tenancy Branch