



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNCD

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "*Act*") for:

- a monetary order for damage or compensation under the *Act*, sections 51 and 67; and
- authorization to recover her filing fee for this application from the purchaser pursuant to section 72.

The tenant attended the hearing but no one appeared on behalf of the landlord. I kept the teleconference line open from the time the hearing was scheduled at 1:30 p.m. until 1:41 p.m. to allow the landlord the opportunity to call. The teleconference system indicated that only the tenant and I had called into the hearing. I confirmed the correct call in number and participant code for the hearing had been provided. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with the notice of dispute resolution package and her evidence on December 1, 2018 by registered mail. The tenant provided the Canada Post tracking number for this mailing which is referenced on the first page of this decision. The tenant also provided the Canada Post registered mail customer receipt which showed that the address for delivery of the tenant's notice of dispute resolution package matched the landlord's stated address for service specified in the tenancy agreement. The tenant testified that the Canada Post tracking website showed that the notice of hearing package was received. I find that the landlord was deemed served with the notice of dispute resolution package and the tenant's evidence five days after mailing, being December 6, 2018, pursuant to sections 88 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation damage or loss under the *Act* pursuant to sections 51 and 67?

Is the tenant entitled to recover her filing fee for this application from the landlord pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision.

The tenant testified that the tenancy started on November 1, 2014. The rent was initially \$850.00 per month and the rent increased to \$885.00 per month in August 2017. The tenant provided a copy of her rent cheque from December 2017 showing the amount of rent paid was \$885.00.

The tenant testified that the landlord told her in October 2017 that she wanted to sell the property. The tenant considered purchasing the property from the landlord and there were multiple conversations between the landlord and the tenant in October and November 2017 discussing the possibility of selling the property to the tenant. The tenant provided multiple email messages which she exchanged with the landlord in November 2017 which corroborate the tenant's testimony.

The tenant provided an email from the landlord dated November 27, 2017 wherein the landlord offered to sell the property to the tenant. The tenant responded with an email on November 28, 2017 stating that she was not able to purchase the property so the landlord should list the property and find another buyer.

On November 30, 2017, the landlord issued the Two Month Notice stating that she was ending the tenancy so that her father could move into the rental unit.

The tenant testified that she moved out of the rental unit on February 3, 2018 in accordance with the Two Month Notice issued to her on November 30, 2017. The tenant testified that her father notified her on February 14, 2018 that the property was listed for sale on an online real property listing service. The tenant downloaded some

photos of the property from the listing service on February 14, 2018 which she produced as evidence. The tenant recognized the property in the marketing photographs as her former rental unit. The tenant testified that she was positive that this was the same property because she recognized curtains in the marketing photographs which she had sewn herself.

The tenant produced further photographs from the online real property listing service which show that the property was sold in March 2018.

The tenant requested monetary compensation in the amount of twelve times her monthly rent pursuant to section 51(2) of the *Act*.

Analysis

The tenant has applied for a monetary award pursuant to section 51 of the *Act*. As noted above, the tenant requested compensation in the amount of twelve times her monthly rent pursuant to section 51(2). This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy for the landlord's use of the property.

The relevant sections of the *Act* are provided below as the legislation was written and in force at the time the tenants were issued the Two Month Notice. Recent legislative changes to these sections of the *Act* are not retroactive.

Section 49 of the *Act* stated in part as follows:

49(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be
(a) not earlier than 2 months after the date the tenant receives the notice...

Section 51 of the *Act* stated, in part, as follows:

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.

...

- (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.***

[My emphasis added]

The Two Month Notice was issued on November 30, 2017, the previous version of section 51(2) therefore applies and the maximum award is limited to an amount equal to two times the monthly rent.

Based upon the tenant's unchallenged testimony and evidence that the property was listed for sale almost immediately after the tenant vacated the property, I find that the landlord did not take steps to move her father into the rental unit in a reasonable time as required by section 51(2)(a) of the *Act* or use the property for the stated purpose for six months as required by section 51(2)(b) of the *Act*. As such, I find that tenant is entitled an award of two times the monthly rent, being \$1,770.00 (\$885.00 x 2).

Since the tenant has been successful in this matter, I grant the tenant's request for reimbursement of the filing fee.

According, I grant the tenant a monetary order for \$1,877.00, as calculated below.

<u>Item</u>	<u>Amount</u>
Monetary compensation (\$885.00 x 2)	\$1,770.00
Filing fee	\$100.00
Total	\$1,877.00

Conclusion

I grant the tenant's application for compensation pursuant to section 51(2) of the *Act*.

I grant the tenant's request for reimbursement of the filing fee.

I grant the landlord a monetary order in the amount of **\$1,877.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: March 22, 2019

Residential Tenancy Branch