



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for loss or other money owed 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 of the *Act*.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:41 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that she had served the landlord with her application for dispute resolution hearing package ("Application") and evidence by way of registered mail on January 23, 2019. The tenant provided the tracking number in her evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence on January 28, 2019, five days after mailing.

Issues

Is the tenant entitled to monetary compensation for loss or other money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recovery of his filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on December 15, 2015, and ended on December 31, 2018. Monthly rent was set at \$950.00, payable in advance on the first of each month.

The tenant provided undisputed testimony in this hearing as the landlord did not attend. The tenant moved out after receiving a 2 Month Notice issued to her by the landlord on November 1, 2018. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: “the rental unit will be occupied by the landlord or the landlord’s spouse or close family member (father, mother, or child) of the landlord or the landlord’s spouse”. A copy was included as part of the tenant’s evidence.

The tenant is seeking compensation as the landlord did not use the home for the purpose indicated on the 2 Month Notice. The tenant provided evidence to show that the landlord had re-posted the rental unit for rent online after she had moved out. The tenant saw an ad on January 17, 2019, which was again re-posted on February 27, 2019 advertising the unit for rent for \$1,400.00 per month. The tenant recognized the pictures in the postings.

The tenant is seeking a monetary order in the amount of \$11,400.00 in compensation for the landlord’s failure to comply with the *Act*.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the

amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find that it was undisputed that the landlord failed to comply with section 49(3) of the *Act*. The tenant provided evidence to show that the landlord had attempted to re-rent the rental unit instead of occupying the rental unit as indicated on the 2 Month Notice. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of \$11,400.00

As the tenant was successful in her claim, I find that she is also entitled to recover the filing fee for this application.

Conclusion

I issue a \$11,500.00 Monetary Order in favour of the tenant in compensation for the landlord's failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: April 1, 2019

Residential Tenancy Branch