



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 20, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the "Act"):

- a monetary order for compensation

The hearing was scheduled for 1:30pm on April 11, 2019 as a teleconference hearing. The Tenant appeared and provided affirmed testimony. No one appeared for the Landlords. The conference call line remained open and was monitored for 35 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package were served to the Landlords by registered mail on December 22, 2018. The Tenant stated that he sent the Landlords more evidence by registered mail on March 19, 2019. Copies of the Canada Post registered mail receipts were submitted in support. Based on the oral and written submissions of the Tenant, and in accordance with sections 89 and 90 of the Act, I find that the Landlords are deemed to have been served with the Application and documentary evidence on December 27, 2018, as well as March 24, 2019, the fifth day after their registered mailings. The Landlords did not submit documentary evidence in response to the Application.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 51 and 67 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on April 1, 2016. Rent in the amount of \$800.00 was due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 which has since been returned to him by the Landlords. The tenancy ended on October 31, 2018. Neither party submitted a copy of the tenancy agreement.

The Tenant stated that on September 19, 2018, the Landlords served him in person with a Two Month Notice to End Tenancy for Landlord's Use of the Property dated September 19, 2018 (the "Two Month Notice"). The Two Month Notice indicated that, the rental unit will be occupied by the Landlords or the Landlords' close family member (parent, spouse or child; or the parent or child of that individual's spouse). The Two Month Notice dated September 19, 2018, has an effective vacancy date of November 16, 2018. The Tenant submitted a copy of the Two Month Notice in support.

The Tenant stated that after receiving the Two Month Notice, he moved out of the rental unit on October 31, 2018. The Tenant stated that the Landlords have not compensated him a monetary amount equivalent to one month's rent payable under the tenancy agreement as indicated on the Two Month Notice. The Tenant stated that he sent the Landlords notification of this requirement; however, the Tenant stated that they were unwilling to compensate him accordingly. As such, the Tenant is seeking a monetary award in the amount of \$800.00.

The Tenant is also claiming that after moving out of the rental unit, the Landlords re-rented the rental unit to someone other than the Landlords or a close family member as they indicated on the Two Month Notice. The Tenant stated that he returned to the rental unit on November 20, 2018 with his brother as a witness, to discuss the one month of compensation owed with the Landlords. The Tenant stated that it was on this date that he and his brother spoke with the Landlord's spouse who indicated that the rental unit has been rented to their cousin's sister. The Tenant referred to a notarized witness statement from his brother in support. The witness statement could not be located in the Tenant's evidence package. Tenant requested to submit the document into evidence after the hearing; however, this request was denied.

The Tenant is seeking 12 times the monthly rent payable under the tenancy agreement as he is claiming that the Landlords did not follow through on the intended purpose noted on the Two Month Notice. The Tenant is seeking a monetary amount of \$9,600.00.

Lastly, the Tenant is seeking \$1,211.45 in relation to the moving costs he incurred, as well as storage fees associated with having to move from the rental unit. The Tenant provided receipts in support.

Analysis

Based on the undisputed affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 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 case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. 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.

Section 51(1) of the *Act* requires a landlord who gives notice to end a tenancy for landlord's use to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a notice to end tenancy for landlord's use under section 49, that complies with the requirements set forth in Section 52 [*form and content*] 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.

I accept the Tenant's undisputed testimony that the Landlords have not compensated him an amount that is the equivalent of one month's rent payable under the tenancy agreement. I find that the Two Month Notice complies with the requirements for form and content; therefore, I find that the Tenant has established an entitlement to a monetary amount of \$800.00, pursuant to Section 51 of the *Act*.

Section 49 (3) states that a Landlord may end a tenancy in respect of a rental unit if a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49 further described a close family member as;

- (a) *the individual's parent, spouse or child, or*
- (b) *the parent or child of that individual's spouse;*

I accept the Tenant's undisputed testimony that he and his brother attend the rental unit and spoke with the Landlord's spouse who indicated that the rental unit had been re-rented to their cousin's sister. Based on the Tenant's undisputed testimony, I find that the Landlord's cousin's sister is not considered a close family member as described in Section 49 of the *Act*.

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- a) taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- b) used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

As the Tenant indicated that the Landlord's spouse stated that the rental unit has been re-rented to their cousin's sister, which does not fall within the meaning of a close family member under Section 49 of the *Act*, I find that the Landlords have not used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

In light of the above, I find that the Tenant has established an entitlement to 12 months' rent payable under the tenancy agreement pursuant to Section 51 of the *Act*. I accept Tenant's testimony that the rent payable each month was \$800.00. As such, I find that the Tenant has established an entitlement to \$9,600.00.

The Tenant has also claimed for further compensation related to moving and storage costs he incurred following the end of his tenancy. I find that the Tenant did not dispute the Two Month Notice and accepted the end of their tenancy according to the Notice. I find that Section 51(2) outlines a specific amount for compensation and that the Tenant is not entitled to any further compensation under the *Act*.

Based on the above the Tenant is entitled to \$10,400.00 in compensation from the Landlords, pursuant to section 51 (1) and (2) of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$10,400.00.

Conclusion

The Landlords have breached Section 49 and 51 of the *Act*. I grant the Tenant a Monetary Order in the amount of \$10,400.00. The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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 17, 2019

Residential Tenancy Branch