



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT RPP FFT

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- A return of personal possession pursuant to section 65; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. Both co-tenants appeared and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant AH (the "tenant") primarily spoke on behalf of both tenants.

The tenant testified that they served the landlord with their application for dispute resolution and evidentiary materials on December 18, 2018 by registered mail. The tenant provided a Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord was deemed served with the tenants' materials on December 23, 2018, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the tenant said they are not seeking a return of personal property and withdrew that portion of their application.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy began in or about April 2015. The monthly rent was \$1,150.00 payable on the first of each month. The tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use on July 21, 2017, with a stated effective date of September 15, 2017. A copy of the 2 Month Notice was submitted into evidence. The 2 Month Notice provides the reason for the tenancy to end as, *the unit will be occupied by the landlord or landlord's close family members*.

The tenant testified that the tenancy ended on September 30, 2017, the corrected effective date of the 2 Month Notice. The tenant testified that sine moving out they discovered that the landlord had listed the rental unit for sale. The tenant submitted into documentary evidence copies of online listings for the rental unit showing that it was available for viewing and purchase on December 16, 2017.

The tenant said that they paid a \$50.00 deposit for the use of a FOB device for the rental property and the deposit was never returned. The tenants submitted into documentary evidence a copy of a receipt for a deposit in the amount of \$50.00.

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.

I accept the evidence of the tenant that they paid a \$50.00 deposit to the landlord for the use of a FOB device. I accept the evidence that the landlord did not return this deposit.

Accordingly, I find that the tenant is entitled to a monetary award in the amount of \$50.00 for the return of their deposit paid for this FOB.

Section 51(2) of the *Act* states 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.

In the 2 Month Notice the landlord indicated that the tenancy is ending as the landlord or a close family member will occupy the rental unit. The tenant gave evidence that instead of being occupied the rental unit was placed on the market for sale. The tenant provided documentary evidence by way of the online listings showing the rental unit as available for purchase.

I find, based on the undisputed evidence of the tenant, that the landlord did not use the rental unit for the purposes stated on the 2 Month Notice. Consequently, I find that the tenant is entitled to a monetary award of \$2,300.00, double the amount of the monthly rent.

As the tenants were successful in their application they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,450.00.

The tenants are 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.

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 15, 2019

Residential Tenancy Branch