



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFL, MNRL

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$2450 for unpaid rent
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sufficiently served on the Tenant on March 20, 2019 as the Tenant acknowledged service of the documents.

Neither party uploaded any documents. However, the tenant testified she gave the landlord some documents including some e-mails prior to the hearing. Those documents were not provided to the Branch for this hearing.

The parties have been involved in a number of different applications. Of relevance to this hearing is a decision dated November 30, 2018 where the arbitrator determined the landlord failed to use the property for the intended purpose set out in the 2 month Notice to End Tenancy and awarded a monetary order in favor of the tenant for the equivalent of 2 months rent.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start in September 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$2420 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1000. The security deposit has been dealt with in a previous proceeding.

On or about December 27/28, 2017 the landlord gave the tenant a 2 month Notice to End Tenancy that set the end of tenancy for February 28, 2018.

The tenant testified she and the landlord exchanged e-mails in late December and early January in which the tenant proposed to give the landlord 10 day notice to end the tenancy early. The e-mails were not provided. However, the tenant read an e-mail dated December 30, 2017 advising that she had found a new place to move to although there were problems and asking whether she could give a 10 day notice if the problems with her new proposed rental unit resolved itself. .

The tenant testified she and the landlord agreed to end the tenancy at the end of January 2018 and that the tenant was entitled to the rent for January 2018 in satisfaction her claim for the equivalent of one month rent under section 51(1).

The tenant testified she moved out around the middle of January. However, she did remove all of her belongings until February 7, 2018.

The landlord submits the end of tenancy date on the Notice to End Tenancy was February 28, 2018. She acknowledged the tenant was entitled to the equivalent of one month rent free under section 51(1) of the Act. The tenant took that for January 2018. She submits she is entitled to one month for non-payment of rent.

The landlord began renovating the rental unit around the end of the first week in February. The landlord testified she intended to move into the rental unit. However, she was separating and decided it would be better if she sold the rental property.

The arbitrator in a decision dated November 30, 2018 held as follows:

“The Landlord issued a 2 Month notice to End Tenancy for Landlord’s use on December 28, 2017. The reasons for the Notice were as follows:

“The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse).”

The Tenant testified that she vacated the rental unit on February 7, 2018.

She further testified that she saw a “For Sale” sign on the property on March 8, 2018, and a sold sign on May 22, 2018.

...

I find that the Landlord occupied the rental unit following the end of the tenancy. However, the evidence confirms that just over two weeks after the effective date of the Notice she listed the property for sale. I accept her evidence that the property was listed for sale on March 16, 2018, that the closing date of the sale was May 29, 2018 and the possession date July 31, 2018.

Section 51(2) specifically references the *effective date of the notice*, which in this case is February 28, 2018.

I find that the rental unit was not used for the stated purpose, which as noted on the 2 Month Notice, was to be occupied by the Landlord, *for at least six months following the effective date of the Notice*, as at minimum, the Landlord would have had to occupy the rental unit until August 28, 2018. The evidence confirms the property was sold and the Landlord vacated the rental unit on July 31, 2018.

As such, the Tenant is entitled to the sum of \$4,840.00 representing double the monthly rent payable under the tenancy agreement.

Analysis:

I do not accept the submission of the landlord that she is entitled to one month rent for the following reasons:

- The tenant testified that the parties agreed that the tenancy would end at the end of January 2018. The landlord's testimony in this hearing confirmed this agreement. The parties relied on this agreement. There was an exchange of e-mails. It is unclear whether the agreement was in writing as neither party provided copies of those e-mails. However, I determined even if the agreement is not evidenced in the e-mails would landlord is estopped from now making a claim for loss of rent for February after she has agreed to end the tenancy at the end of January.
- Even if it is determined the tenant breached the tenancy agreement by failing to pay rent for the month of February, I determined the landlord is not entitled to the full month rent. The Act provides a party must do whatever is reasonable to minimize that loss. Section 7(2) provides that as follows:

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord complied with this section and contractors began renovating the property on February 6, 2018. This reduced delays that the landlord would face in moving into the property and putting the property up for sale.

- I do not accept the submission of the landlord that she is entitled to the full month rent because the tenant breached the tenancy agreement in over holding. I determined the agreement is binding on the parties subject to the landlord's right to claim for compensation for over holding.
- I determined the landlord is entitled to 7 days of rent as the tenant has over held for the 7 days. The November 30, 2018 decision of the previous arbitrator is binding on the parties. Further the tenant testified in this hearing that she had not fully removed all of her belongings until February 7, 2018.

Monetary Order and Cost of Filing fee

I determined the landlord has established a claim against the tenant in the sum of \$605 for over holding rent for 7 days (\$2420 divided by 28 days multiplied by 7 days = \$605). In summary I ordered that the Tenant pay to the Landlord the sum of \$605 plus the \$100 filing fee for a total of \$705.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 16, 2019

Residential Tenancy Branch