



Dispute Resolution Services

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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 damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Landlord J.S. (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord indicated that he was representing the interests of all named respondents.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and the tenant's evidence which was served to them by registered mail while the tenant acknowledged receipt of the landlord's evidence which was also served by registered mail. In accordance with sections 88 and 89 of the Act, I find that the landlord and the tenant are duly served with the Application and each other's evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The tenant testified that this tenancy began on August 01, 2004, with a monthly rent of \$1,400.00 at the time that the tenancy ended. The tenant stated that their tenancy ended when the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) on May 23, 2017.

The tenant provided in evidence a copy of the Two Month Notice dated May 23, 2017, with an effective date of July 31, 2017. The reason cited on the Two Month Notice is;

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

In addition to the above, the tenant also provided a copy of a receipt for rent paid for the rental unit on June 01, 2017, in the amount of \$1,400.00.

The landlord provided in evidence:

- A copy of a written statement in which the landlord confirmed that they did not move into the rental unit. The landlord states that their spouse obtained a job closer to their current residence at which they were already residing at the time; and
- A copy of a contract for employment for the landlord's spouse.

The tenant submitted that they were given a Two Month Notice indicating that the purchaser of the rental unit (the landlord) or a close family member was going to occupy it. The tenant stated that were informed by a friend that the landlord did not actually occupy the rental unit as indicated on the Two Month Notice. The tenant stated that they were informed that the whole house was available for rent as of September 01, 2017. The tenant testified that there are now occupants in the rental unit who are not close family members of the landlord or the landlord himself.

The tenant submitted that they are requesting a monetary award in the amount of \$2,800.00, equivalent to two month's rent due to the fact that the landlord did not do what they said that they would do as indicated on the Two Month Notice. The tenant also indicated that they are seeking to recover the \$100.00 filing fee.

The landlord submitted that they did intend in good faith to occupy the house and had put the utilities in their name for August 2017. The landlord confirmed that they did not occupy the rental unit due to their wife obtaining a job that was closer to residence where they were residing at the time. The landlord stated that they did not rent out one of the rental units in the house until September 15, 2017, after their spouse commenced their employment. The landlord testified that they did not rent out the other rental unit until October 1, 2017.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 49 (5) of the *Act* establishes that a landlord may issue a Two Month Notice when the purchaser of the rental unit or a close family member intends on occupying the rental unit.

As the Two Month Notice was served in May 2017, I find that section 51 (2) of the Act that was in force prior to May 17, 2018, is applicable. This section stipulates that a landlord must pay the tenant, in addition to the one month's rent in compensation, an amount that is equivalent to two times the monthly rent if 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 the rental unit is not used for that stated purpose for at least six months' duration. I find that the second page of the Two Month Notice that was served to the tenant and provided in evidence also indicates the same information. I find that the Act that was in force at the time that the Two Month Notice was served, in May 2017, does not allow for extenuating circumstances.

Having reviewed the evidence and testimony, I find that it is undisputed that the landlord did not use the rental unit for the stated purpose as indicated on the Two Month Notice, for any actual period of time. For the above reason, I find that the tenant has suffered a

loss due to the landlord's actions in violation of section 49 (5) of the Act and I find that the landlord is obligated to compensate the tenant as required under section 51 (2) of the Act that was in force prior to May 17, 2018.

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.

Therefore, I find that the tenant is entitled to a monetary award in the amount of \$2,800.00, which is the equivalent of two month's rent for the rental unit. As the tenant is successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to section 67 of the Act, I grant a monetary order in the favour of the tenant under the following terms:

Item	Amount
Two Month's Rent Compensation	\$2,800.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$2,900.00

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 25, 2019

Residential Tenancy Branch