



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 damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the Landlords, pursuant to section 72.

Counsel for landlord B.M. (the "Seller's Counsel"), Tenant A.M. (the "Tenant") and the majority shareholder for the Landlord numbered company (the "Buyer") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Seller's Counsel and the Buyer confirmed receipt of the Tenant's application for dispute resolution packages via registered mail. I find that landlord B.M. (the "Seller") and the Buyer were served with the Tenants' application for dispute resolution in accordance with section 89 of the *Act*.

Preliminary Issue- Named Parties

Counsel for the Seller submitted that the Seller's property manager, who is not the tenants' landlord, was listed as a landlord on the tenants' application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the tenants' application to remove the property manager as he was incorrectly named.

The Buyer testified that he was personally listed as a landlord on the tenants' application for dispute resolution; however, it was a numbered company of which he is the majority shareholder, who actually purchased the property. A contract of purchase and sale and addendum were entered into evidence to support the above testimony. Pursuant to section 64 of the *Act*, I amend the Tenants' application to state the numbered company, rather than the Buyer's name.

Issues to be Decided

1. Are the Tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the Tenants entitled to recover the filing fee for this application from the Landlords, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of all parties in attendance, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the parties claims, and my findings are set out below.

The Tenant and Counsel for the Seller agreed that monthly rent in the amount of \$1,627.00 was due on the first day of each month. The Buyer testified that he did not know the rental rate paid by the Tenants to the Seller.

Both the Tenant and Counsel for the Seller agreed that on December 16, 2016 the tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use with an effective date of February 28, 2017 (the "Two Month Notice").

The Two Month Notice was entered into evidence and stated the following reason for ending the tenancy:

- 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.

Counsel for the Seller submitted that the Seller did not remember if he received a written request from the Buyer to serve the tenants with the Two Month Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. Counsel for the Seller submitted that it was the Seller's understanding that the Buyer wanted the subject rental property for his family's use.

Counsel for the Seller entered into evidence an e-mail from the Buyer's realtor to the Seller's realtor dated May 9, 2019 which states:

Confirming at the time of the purchase my clients were intended to buy the property for the family.

The Buyer testified that he originally purchased the subject rental property for his step-daughter, but she enrolled in a school program in a different city and so after he took possession of the subject rental property, he renovated it and sold it. The Buyer testified that the subject rental property was never tenanted or occupied while he owned it. The Buyer testified that the subject rental property was sold on May 29, 2017.

The tenant entered into evidence an online advertisement for the subject rental property listed after she moved out. The Buyer testified that his listing agent put the advertisement up as part of market research to aid in selling the subject rental property.

The Buyer testified that he could not remember if he provided the Seller with a written request for the Seller to serve the tenants with the Two Month Notice because the purchaser or a close family member intended in good faith to occupy the rental unit.

The Tenant is seeking the following damages for wrongful eviction:

Item	Amount
Cost of moving	\$1,350.00
Cost of new mattress	\$1,054.40
Difference in rent from old tenancy to new tenancy for 12 months (\$173.00 * 12)	\$2076.00
Lost wages for boyfriend who assisted with move	\$156.00
Living room light	\$265.39
Labour to install light	\$126.00
Hardware to hang pictures, mirrors and shelves	\$34.63

Emotional and Physiological suffering	\$4,000.00
Downsizing, value of goods given away	\$3,000.00
Expenses related to looking for a new apartment	\$500.00
Cost of pizza dinner for movers	\$67.63
Photocopying	\$5.01
Land title search	\$9.45
Car accident charge	\$890.00
Mileage	\$200.00
Total	\$13,734.51

The Tenant testified that she hired movers to move out of the subject rental property at a cost of \$1,350.00. A receipt for same was entered into evidence. The tenant is seeking to recover the cost of her move from the Landlords.

The Tenant testified that her mattress was damaged in the move and required replacing. The Tenant entered into evidence a screen shot of the price of a new mattress in the amount of \$1,054.40 which she is seeking to recover from the Landlords.

The Tenant testified that the apartment she moved into after receiving the Two Month Notice cost \$173.00 per month more than the subject rental property. The Tenant is seeking the difference in rent paid between the rentals for one year in the amount of \$2,076.00.

The Tenant testified that her boyfriend took a day off from work to help her move. The tenant entered into evidence her boyfriend's leave request form and pay stub evidencing a daily rate of \$145.00. The Tenant's monetary worksheet also requested a further \$11.00 for lost pay for her boyfriend though the tenant could not explain that charge or why she was seeking it.

The Tenant testified that the property she moved into did not have a light in the living room and so she had to purchase one and pay to have a handyman install it. The Tenant entered into evidence a receipt for a chandelier in the amount of \$265.39 and a handyman receipt in the amount of \$126.00.

The Tenant testified that she purchased hardware to hang up pictures, mirrors and shelves at the new rental property. The tenant entered into evidence two receipts for hardware totalling \$34.63.

The Tenant testified that being forced to move from her home of approximately 7 years with her elderly and ailing mother was emotionally devastating. The Tenant testified that she became depressed and sought counselling. No medical records were entered into evidence. The Tenant testified that it was extremely challenging to find accommodation equivalent to what her and her mother were living in and that the new rental property was much smaller than the subject rental property, requiring her to give away a number of pieces of furniture due to size constraints. The Tenant is seeking \$4,000.00 for emotional and psychological suffering. The Tenant is also seeking \$3,000.00 for the value of furniture she was forced to give away.

The Tenant testified that she incurred expenses when searching for a new rental property such as gas charges, taxi charges and having someone stay with her mother while she viewed potential rental properties. The tenant is seeking \$500.00 to cover these expenses. No receipts or breakdown of expenses were entered into evidence.

The Tenant testified that she purchased a pizza dinner for the movers at a cost of \$67.63 and is seeking reimbursement from the Landlords. A receipt for same was entered into evidence.

The Tenant testified that she spent \$5.01 on photocopying in preparation for today's hearing. A receipt for same was entered into evidence. The Tenant testified that she spent \$9.45 on a land title search which was submitted as evidence in this dispute. A receipt for same was entered into evidence. The Tenant is seeking to recover the cost of these expenses from the Landlords.

The Tenant testified that on March 1, 2017 she was so distraught at moving out of the subject rental property that she got in a car accident. The Tenant was found to be 100% at fault. The Tenant testified that her insurance premiums have gone up \$130.00 per year for three years and she was required to pay a \$300.00 deductible. It is not clear how the Tenant arrived at the sum of \$890.00 as the above listed damages amount to \$690.00. The Tenant testified that had she not been wrongfully evicted she would not have gotten in this car accident and so the Landlords should have to pay for her losses arising out of the car accident.

The Tenant testified that her boyfriend drove her to view many potential rental properties and is seeking the recovery of mileage for these trips in the amount of \$200.00. The Tenant did not provide a breakdown of how this amount was calculated.

Analysis

I find that the Two Month Notice was served on the Tenants in accordance with section 88 of the *Act*.

On the date the Two Month Notice was served on the Tenants, section 49(5)(c) of the *Act* stated that a landlord may end a tenancy in respect of a rental unit if the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) The purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) The purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

On the date the Two Month Notice was served on the Tenants, section 51(2) of the *Act* stated that in addition to the amount payable under subsection (1), if:

- 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
- 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.

Based on the evidence of the Buyer, I find that the rental unit was not used for the purpose stated on the Two Month Notice for at least 6 months beginning within a reasonable period after the effective date of the notice.

I find that it is not clear if the written notice required to be provided by the Buyer to the Seller under section 49(5) of the *Act* was provided as neither the Buyer nor the Seller can recall what documents were exchanged. Thus, is it not clear if it the Buyer or the

Seller is liable for the two months' rent owed to the Tenants under section 51 of the *Act*. However, based on the evidence before me, I am convinced that section 49(5) of the *Act* was breached by either the Buyer or the Seller and the Tenants are entitled to remuneration under section 51 of the *Act*. In this case, I find that the failure of the Buyer and Seller to prove if the written request under section 49(5) of the *Act* was given by the Buyer to the Seller leaves the Buyer and the Seller joint and severally liable for the damages owed under section 51 of the *Act*, in the amount of \$3,254.00.

Given that section 51 of the *Act* clearly sets out the monetary damages owed to the Tenants if section 49(5) of the *Act* is breached, I find that the Tenants monetary claim is limited to that amount. I dismiss the Tenant's monetary claim for damages over and above \$3,254.00.

As the Tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the Landlords.

Conclusion

I issue a Monetary Order to the Tenants in the amount of \$3,354.00.

The Tenants are 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: May 24, 2019

Residential Tenancy Branch