



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

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

- a monetary order for compensation under the Act, regulation or tenancy agreement pursuant to sections 51 and 67; and,
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation under the Act, regulation or tenancy agreement pursuant to sections 51 and 67?

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

Background and Evidence

The landlords testified that they purchased the property in December 2016 and the tenants were already residing there. The parties agreed that the tenants paid a monthly rent of \$1,300.00 for the rental unit.

The landlord issued a Two Month Notice To End Tenancy for Landlord's Use of Property (the "Two Month Notice") on June 30, 2019 with a stated move out dated of August 31, 2019. The stated for issuing the Two Month Notice was:

All 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 close family member intends in good faith to occupy the rental unit.

The landlord put the name and address of the purchaser on the Two Month Notice. The tenant was personally served the Two Month Notice on June 30, 2018.

The landlord testified that there was a prospective purchaser in June 2018. The landlord testified that the purchaser and the landlord entered a contract of purchase and sale to sell the property. The landlord testified that the purchaser sent him a written letter on June 25, 2018 asking the landlord to issue the Two Month Notice. The landlord read the letter during the hearing but the landlord did not submit the letter as evidence.

The landlord testified that he thought that the real estate contract subjects had been removed. However, the landlord testified that the subjects were not in fact removed and the sale got delayed with multiple extensions of the subjects.

The landlord testified that sale eventually fell apart in August 2018. The landlord testified that he still owns the property and the property is still marketed for sale.

The tenants moved out on August 31, 2018.

The tenants provided an online classified advertisement for the rent of the rental unit on October 2, 2018. The advertisement stated that it had been posted 26 days earlier posted 26 days prior, being September 6, 2018. The rental unit was advertised at \$2,500.00 per month.

The landlord testified that the rental unit was rented out to new tenants for \$2,200.00 per month. The landlord testified that he is still trying to sell the property but he rented the property again because he needed rental income while the property is being marketed.

The tenant previously filed an application for dispute resolution for compensation under the *Act* against the purchaser. That file number is referenced on the first page of this decision. That application was dismissed since the purchaser never completed the purchase.

The tenant is seeking compensation in the amount of twelve months of rent, being \$15,600.00, pursuant to section 51 of the *Act*.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 51 of the Act states that:

- (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of **12 times the monthly rent** payable under the tenancy agreement if
 - (a) 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
 - (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
 - (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. (**emphasis** added)

In this matter, I find that the landlord did not complete the steps within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy as required by section 51(2)(a) of the *Act*. The landlord's notice stated that the purchaser had requested vacant possession in writing. However, I am not satisfied that the purchaser had in fact done so without the production of the purported letter as evidence. Furthermore, the notice stated that the real estate subjects had been removed when they had not in fact been removed.

I find that the landlord was premature in issuing the Two Month Notice before the subjects were removed. For the forgoing reasons, I find that the landlord has violated 51(2)(a) of the *Act*.

Section 52(3) of the Act permits an arbitrator to excuse a violation of section 51(2) if there are extenuating circumstances. The landlord argued that the unforeseeable collapse of the sale of the property constituted extenuating circumstances. However, I do not find that extenuating circumstances existed in this matter.

First, the landlord did not provide any documentary evidence in regards to the real estate transaction. Further, based on the landlord's own testimony, I find that the landlord issued the Two Month Notice prematurely by issuing it before the subjects were removed. The landlord should have known that the sale was still contingent on the subjects until the subjects were removed. The fact that a sale fell through before the subjects were removed is not an unforeseeable or extenuating circumstance.

Furthermore, the motivation of the landlord is questionable since the landlord marketed the property at a rent almost double the amount the tenant paid only days after the tenant had moved out. I do not find that extenuating circumstances existed in this matter.

I find that the tenant is entitled a monetary award in the amount of twelve months of rent, being \$15,600.00, pursuant to section 51 of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I grant the tenant a monetary order for **\$15,700.00** (\$15,600.00 compensation for violation of the *Act* and \$100.00 reimbursement of the filing fee)

Conclusion

I grant the tenant a monetary order in the amount of **\$15,700.00**. If the landlord fails to comply with this order, the landlord may file the order in the Provincial Court to be 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 29, 2019

Residential Tenancy Branch