



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 award for damages and loss pursuant to section 67; 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 information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with the application for dispute resolution dated May 8, 2019 and evidence by registered mail sent on May 9, 2019. The tenant confirmed the hearing package was sent to the address for service provided by the landlord on the 2 Month Notice to End Tenancy. The tenant provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on May 14, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenant provided the following information. This tenancy began in December, 2018 and ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use in April, 2019. The monthly rent was \$900.00 payable on the first of each month. The rental unit was a suite in a detached home.

The tenant testified that they were issued a 2 Month Notice dated February 27, 2019. The reason provided on the Notice for the tenancy to end is that:

All of the conditions for 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.

The tenant submitted into documentary evidence a copy of the 2 Month Notice and letter from the purchaser of the rental property stating they intend for the rental unit to be occupied by the purchaser or a close family member.

The tenancy ended in accordance with the 2 Month Notice. The tenant submits that after vacating the rental unit they discovered the rental building being advertised for rent. The tenant said that both the rental suite and the other portion of the rental building have been advertised as available. The tenant gave evidence that a family member followed up on the advertisement and confirmed that the entire rental building is being made available for rent. The tenant submitted into documentary evidence copies of the advertisement and correspondence confirming the availability of the rental suite.

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. Section 51(2) of the *Act* states that a landlord or, the purchaser who asked the landlord to give the notice must pay the tenant an amount that is equivalent to 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,

In the 2 Month Notice the landlord indicated that the purchasers of the property have requested in writing to issue the notice as the purchaser, or a close family member, intends to occupy the rental unit.

The tenant gave evidence that instead of being occupied the rental unit was placed on the market for rent. The tenant provided documentary evidence by way of the online listings showing the rental unit as available and correspondence with the purchaser of the property.

I accept the evidence that the named respondent is the purchaser of the rental property. I find, based on the undisputed evidence of the tenant, that the purchaser 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 \$10,800.00, the equivalent of 12 times the monthly rent payable under the tenancy agreement.

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

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$10,900.00.

The tenant is provided with the 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: July 4, 2019

Residential Tenancy Branch