



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damages pursuant to section 67;
- Authorization to recover the filing fee for this application pursuant to section 72.

The lawyer SS appeared with the landlord (“the landlord”). The tenant attended. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence.

Preliminary Issue:

The landlord acknowledged receipt of the Notice of Hearing but did not acknowledge receipt of the tenant’s evidence package. The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution, which included all the tenant’s evidence, by registered mail sent on June 15, 2019 and deemed received by the landlord under section 90 of the *Act* five days later, that is, on June 20, 2019. The tenant provided the address at the hearing to which the tenant sent the registered mail. The landlord acknowledged that the address was correct.

The tenant provided the Canada Post Tracking Number in support of service to which I

refer on the cover page. Pursuant to sections 89 and 90, I find the tenant has met the burden of proof that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution June 20, 2019.

The landlord submitted a substantial evidence package, receipt of which the tenant acknowledged. I find the landlord served the tenant in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for compensation for damages pursuant to section 67;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed upon the following:

- The parties entered into a 1-year fixed term tenancy agreement signed May 29, 2019 to begin June 1, 2019 for rent of \$2,400.00.
- The tenant provided the landlord with a security deposit of \$1,200.00 and the first month's rent of \$2,400.00 at the time of signing.
- On May 30, 2019, the agent of the landlord informed the tenant that the landlord had sold the property and the tenant could not move in.
- The landlord acknowledged defaulting on the agreement.
- The landlord returned the first month's rent to the tenant along with the security deposit on June 7, 2019.
- The tenant was required to move from his previous accommodations and urgently search for a replacement unit, finding one in time to move in June 2, 2019..

The tenant requested damages in the amount of 12 months rent (12 x \$2,400 = \$28,800.00). The tenant testified that his family was placed at considerable inconvenience by the landlord's decision to sell the unit. The tenant stated that his family included a newborn child. The tenant stated he attempted to call the landlord and the property manager for an explanation and both refused to accept his calls.

The tenant further testified that he rented another unit for \$2,100.00 which does not meet the family's needs as well as the landlord's unit; for example, the replacement unit requires additional unplanned commutes. The tenant submitted no receipts in support of expenses associated with the landlord's defaulting on the lease.

The landlord submitted that the tenant's costs were minimal, and the tenant has a nominal or non-existent claim for damages.

Analysis

The hearing lasted 88 minutes. While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

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. 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. In this case, the onus is on the tenant to prove his entitlement to a claim for a monetary award.

The tenant is seeking a monetary award of \$28,800.00. The tenant did not support this figure by alleging increased expenses of the new accommodation or expenses relating to finding another place to live on short notice. The tenant submitted no testimony or evidence with respect to damages other than an unsupported claim for the full amount requested.

Section 16 of the *Act* states, "the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit." Section 17 of the *Act* states, "a landlord may require, in accordance with this *Act* and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement."

During the hearing the landlord acknowledged that the parties had entered into a written agreement for the tenant to occupy the rental unit, a copy of which the landlord submitted as evidence.

Residential Tenancy Policy Guideline #16 examines the issue of compensation in detail. It notes:

*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred...In order to determine whether compensation is due, the arbitrator may determine: a party to the tenancy agreement failed to comply with the Act, regulations or tenancy agreement; loss or damage has resulted from this non-compliance; the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and **the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.***

The landlord breached the contract and tenancy agreement and the tenant suffered damages because he had to find alternate accommodation on short notice. Nevertheless, applying basic contractual damage principles and the *Policy Guideline* as described above, the tenant was also under an obligation to take steps to mitigate his loss. To the tenant's credit, he did so; the tenant quickly located an alternate unit which met his family's needs in most respects. The tenant did not allege any out-of-pocket expenses.

Given that the tenant has not submitted evidence of any loss, I find the tenant's application seeking \$28,800.00 to be excessive. I accept that the tenant has suffered a loss in moving the family possessions and lost time in finding another place to live; however, rent would have been due under the terms of the initial tenancy agreement entered into, and it would therefore be incorrect to award the tenant a return of all rent associated with either tenancy agreement.

As the tenant is paying less rent in the new accommodation, I find that a return of the differences of rent would not provide any compensation to the tenant.

I find the tenant has met the burden of proof on a balance of probabilities for a claim for compensation in an unverified amount; I accept the evidence of the tenant of the haste, time and stress resulting from the loss of the unit, especially given that the family had a

newborn child. I therefore award the tenant nominal damages in the amount of two months rent (\$2,400.00 x 2) for a total monetary award of \$4,800.00.

As the tenant was successful in his application, he may recover the \$100.00 filing fee from the tenant.

In summary, I issue to the tenant a monetary award in the amount of \$4,900.00.

Conclusion

I issue a Monetary Order of \$4,900.00 in favour of the tenant.

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: August 27, 2019

Residential Tenancy Branch