



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 award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties 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 was assisted in making their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution dated May 28, 2019 and evidence. Based on the landlord's testimony I find that the landlords were served in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they served their evidence on the tenant by registered mail sent on August 23, 2019. The landlord provided a valid Canada Post tracking number as evidence of service. The tenant disputed that they received the landlord's evidence.

In accordance with Residential Tenancy Policy Guideline 12 a document is considered deemed served unless there is evidence to the contrary. While the tenant disputes that they were served with the landlord's materials they have given insufficient evidence to rebut the deemed service provisions of the *Act*. Based on the evidence I find that I am satisfied that the tenant is deemed served with the landlord's evidence on August 28, 2019, five days after mailing in accordance with sections 88 and 90 of the *Act* and I find that both parties have been sufficiently served with all materials in accordance with section 71(2)(b) of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlords?

Background and Evidence

This periodic tenancy ended in May 2017 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated March 30, 2017. The monthly rent at the end of the tenancy was \$1,550.00. The reason provided on the 2 Month 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 submits that they began vacating the rental unit on May 15, 2017 but maintained possession until May 31, 2017. The tenant testified that after the tenancy ended the purchaser did not occupy the rental unit but advertised it for rent online. The tenant submits into evidence a copy of an online advertisement dated June 27, 2017. The tenant seeks a monetary award in an amount equivalent to double the monthly rent for the landlord's failure to accomplish the stated purpose for ending the tenancy.

The tenant seeks a total monetary award of \$12,432.00 comprised of double the monthly rent, moving costs, land title searches, other items and aggravated damages for the difference between the rent under the tenancy agreement and the new rent paid for a new tenancy the tenant entered into.

The respondent landlords are the purchasers of the rental property. The landlord confirmed that they gave written request to the previous landlord to issue the 2 Month Notice intending to occupy the rental unit. The landlord submits that despite their intention circumstances arose which prevented them from occupying the rental suite. The landlord confirms that they never occupied the rental unit and instead advertised it online.

Analysis

Section 50 of the Act allows a tenant who has been issued a notice to end tenancy for landlord's use pursuant to section 49 to end the tenancy early by giving the landlord 10 days' written notice on a date earlier than the effective date of the landlord's notice.

In the present case the 2 Month Notice issued by the landlord on March 30, 2017 provides an end of tenancy date of May 31, 2017. While the parties gave evidence that the tenant vacated the rental unit on May 15, 2017, I find that there is no evidence that the tenant gave written notice to end the tenancy earlier than the effective date of May 31, 2019. I accept the tenant's testimony that while they physically vacated, they maintained access to the rental unit and the tenancy did not end until May 31, 2017, the effective date of the 2 Month Notice.

Section 60(1) of the Act provides that an application for dispute resolution must be made within 2 years of the date the tenancy ends.

I have found that the tenancy ended in accordance with the 2 Month Notice on May 31, 2017. The tenants filed their present application for dispute resolution on May 28, 2019. As such, I find that the tenants were within the 2 year limit provided under the Act to file their application for dispute resolution regarding this tenancy.

As the parties correctly identify, because the 2 Month Notice was issued on March 30, 2017 the provisions of the Act as it was at that time applies.

Section 51(2) of the *Act*, as of March 30, 2017 states if:

- (a) 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
- (b) 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.

In the 2 Month Notice the previous landlord indicated that the tenancy is ending as they were informed by the purchaser (the respondents in the present application) that they or a close family member intends to occupy the rental unit.

The parties gave undisputed evidence that the neither of the respondent landlords nor any close family member ever occupied the rental unit. While the landlord submits that there were extenuating circumstances that prevented them from accomplishing the stated purpose for ending the tenancy, I find that the Act does not provide consideration of the circumstances. I accept the evidence of the parties that the landlord did not accomplish the purpose stated on the 2 Month Notice. Accordingly, I find that the tenants are entitled to a monetary award in the amount of \$3,100.00, the equivalent of two month's rent under the tenancy agreement.

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.

While the tenant seeks to recover the costs associated with the tenancy ending and having to move to a new rental unit on the basis of the 2 Month Notice, I find that these are not costs recoverable under the Act. I find that these are simply the costs incurred as the tenancy ended by way of the 2 Month Notice. While I find that the landlord did not use the rental unit for the purposes stated on the notice that does not give rise to a right to recover all of the costs for ending the tenancy, moving or paying rent in a new rental unit. Furthermore, I find that the costs associated with performing land title searches are merely the costs associated with filing an application for dispute resolution and are not recoverable under the Act.

While the tenant suggests that there have been other decisions of this Branch allowing for a greater monetary award, in accordance with section 64(2) of the Act each decision is made on the merits of the case and there is no binding requirement to follow other decisions.

Consequently, I dismiss this portion of the tenant's application.

The tenant seeks aggravated damages in the amount of \$7,500.00. In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

I find that there is insufficient evidence in support of the tenant's claim for aggravated damages. Based on the evidentiary materials I find that the landlord's conduct was not highhanded nor of a deliberate nature that warrants a damage award beyond one set out in statute. I find that the tenants' submissions on this point are insufficient to show that there is an evidentiary basis that would give rise to an extraordinary measure such as aggravated damages. Consequently, I dismiss this portion of the tenants' application.

As the tenants were successful in part in their application they may recover their filing fee from the landlords.

Conclusion

I issue a monetary award in the amount of \$3,200.00 in the tenants' favour as against the landlords, allowing the tenants to recover the equivalent of 2 month's rent under the tenancy agreement and their filing fees .

The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, the 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: September 5, 2019

Residential Tenancy Branch