



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 landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing. The Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended the hearing and was given a full opportunity to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their application for dispute resolution dated June 14, 2019 and evidence by registered mail sent on or about that date. The tenant provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on June 19, 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

This periodic tenancy ended on January 31, 2019 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated November 16, 2018. The monthly rent at the end of the tenancy was \$2,000.00. The reason provided on the 2 Month Notice for the tenancy to end is that, the rental unit will be occupied by the landlord or the landlord's close family member. The tenant submitted into documentary evidence a copy of the 2 Month Notice.

The tenant submits that even before the tenancy ended, they discovered the rental unit being advertised online for rent. The tenant submitted into evidence copies of the online advertisements showing the rental unit being advertised by the landlord. The tenant testified they made email inquiries to the landlord using a friend's account and the landlord confirmed the rental unit is 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 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 dated November 16, 2018, the landlord indicated that the landlord or a close family member, intends to occupy the rental unit.

The tenant gave evidence that instead of being occupied by the landlord or a family member 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 landlord confirming the unit was available as of March, 2019.

I accept the evidence that the landlord 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 \$24,000.00, the equivalent of 12 times the monthly rent of \$2,000.00 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 \$24,100.00.

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: September 20, 2019

Residential Tenancy Branch