



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for a monetary order of \$21,600.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The parties confirmed that they received documentary evidence from the other party and they had the opportunity to review that documentary evidence prior to the hearing. I am satisfied that the parties were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agree that a written tenancy agreement did not exist between the parties. As a result, I will address the lack of a written tenancy agreement later in this decision. The parties agreed that they verbally formed a tenancy effective August 1, 2003. The parties disputed the day the tenant vacated the rental unit. The tenant stated that they vacated the rental unit on August 15, 2018. The landlord stated that the tenant vacated in the middle of September 2018. The parties confirmed during the hearing that at the end of the tenancy, the tenant's rent was \$1,185.00 per month.

There is no dispute that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 1, 2018 ("2 Month Notice"). The 2 Month Notice indicates the reason the tenancy is ending is:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Although the tenant disputed the 2 Month Notice, the 2 Month Notice was upheld and the tenancy ended based on the upheld 2 Month Notice. The effective vacancy date listed on the 2 Month Notice was September 1, 2018.

The tenant is seeking compensation in the amount of \$21,600.00 pursuant to section 51(2) of the *Act* as the rental unit was not used for the stated purpose in accordance with the *Act*. The tenant is seeking 12 months of compensation; however, in their calculation have requested 12 months of compensation based on their new rental agreement at their new residence, which is \$1,800.00 per month.

The landlord and agent testified that the landlord's sister moved into the rental unit on September 16, 2018 and due to family reasons, where were described as the sister not getting along with her husband, the sister moved out of the rental unit in October 2018, which is the following month. The landlord and agent testified that they listed the rental unit for rent in November or December of 2018 for \$2,300.00 per month, and eventually secured a new tenant for \$1,400.00 per month who moved in on January 1, 2019.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

I will first address that the landlord did not have a written tenancy agreement. Section 13(1) of the *Act* applies and states:

Requirements for tenancy agreements

13 (1) A landlord **must prepare in writing every tenancy agreement entered into on or after January 1, 2004.**

[Emphasis added]

I find the landlord breached section 13(1) of the *Act* and as a result, I caution the landlord to ensure that all future tenancy agreements comply are in writing as required by section 13(1) of the *Act*.

I will now address the remainder of the tenant's application. Section 51(2) of the *Act* applies and states:

Tenant's compensation: section 49 notice

51 (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.**

[Emphasis added]

As the landlord has confirmed that the sister moved into the rental unit on September 16, 2018 and moved out of the rental unit the next month in October, 2018, and re-rented the rental unit on January 1, 2019 to a non-family member, I find the landlord failed to use the rental unit for at least 6 months for the stated purpose on the 2 Month Notice beginning within a reasonable period after the effective date of the 2 Month Notice, which was September 1, 2019.

In addition, I find the landlord has provided insufficient evidence to support that extenuating circumstances existed that prevented the landlord from not re-renting the rental unit until at the very least, March 1, 2019, which would have been six months after the effective vacancy date listed on the 2 Month Notice.

Therefore, based on the above, I find the tenant has met the burden of proof and is entitled to **\$14,220.00** in compensation from the landlord, comprised of 12 months multiplied by \$1,185.00 per month, pursuant to section 51(2) of the *Act*. I find the tenant is not entitled to the \$21,600.00 amount claimed, as the tenant mistakenly applied their new monthly rent amount of \$1,800.00 to the 12 months of compensation, when the tenant should have applied their monthly rent when they were issued the 2 Month Notice.

As the tenant's application had merit, I grant the tenant **\$100.00** pursuant to section 72 of the *Act*, for the recovery of the cost of the filing fee.

I find the tenant as established a total monetary claim of **\$14,320.00** comprised of 12 months of compensation noted above, plus the filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of \$14,320.00 accordingly.

Conclusion

The tenant's application has merit and is partially successful.

The tenant has established a total monetary claim of \$14,320.00.

The tenant has been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$14,320.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I dismiss any amount exceeding \$14,320.00 without leave to reapply, due to insufficient evidence.

The landlord has been cautioned as noted above.

This decision will be emailed to the parties. The monetary order will be emailed to the tenant only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2019

Residential Tenancy Branch