



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenants served the landlords with the notice of hearing and the submitted documentary evidence in person on July 5, 2019. Both parties confirmed that the landlords served the tenants with the submitted documentary evidence via Canada Post Registered Mail on September 25, 2019. Both parties also conceded and accepted that the landlords submitted late evidence as of the date of this hearing and have no issue in its submissions at this late time. Neither party raised any service issues. I accept the evidence of both parties and find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

Despite 86 minutes of hearing time, this dispute hearing could not be completed. Both parties were advised that as such, the hearing would be adjourned for continuation. Both parties were cautioned that no new evidence was to be submitted nor would it be accepted.

The hearing was reconvened on November 12, 2019 at 1:30 pm, the tenants attended the hearing via conference call. The hearing was delayed until 1:40 pm to allow the landlords to attend. The landlords did not attend. The hearing resumed in the absence of the landlords. The hearing concluded at 2:03 pm.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2015 on a fixed term tenancy ending on August 31, 2015 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated July 29, 2015. The monthly rent was \$2,100.00 payable on the 1st day of each month. A security deposit of \$1,050.00 was paid on August 8, 2015.

The tenants seek a monetary claim of \$23,132.54 which consists of:

\$11,290.79	Realtor Fees
\$1,041.75	Travel Costs
\$2,400.00	Lost Wages
\$4,200.00	Compensation, Sec. 51(2) Fail to Comply
\$4,200.00	Loss of Quiet Enjoyment
\$100.00	Filing Fee

The tenants state that on July 30, 2017 the landlords served upon them a 2 month notice to end tenancy issued for landlord's use of property dated July 30, 2017. The 2 month notice sets out an effective end of tenancy date of September 30, 2017 and the reason give as:

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

The tenants state that they complied and vacated the rental unit on September 30, 2017. The tenants now claim that the landlords sold the rental property on November 10, 2017 instead of occupying the rental unit as specified. The tenants seek compensation as the landlords have not used the rental unit for that stated purpose for

at least 6 months beginning within a reasonable period after the effective date of the notice for \$4,200.00. The landlords confirmed in their testimony that the rental property was sold as claimed by the tenants on November 10, 2017 instead of occupying the premises themselves.

The tenants also seek compensation under section 7(1) and 67 of the Act. Section 7 of the Act states in part if a landlord or a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act states in part, without limiting the general authority in section 62, if damages or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, an order that party to pay, compensation to the other party.

The tenants seek compensation for:

\$11,290.79	Realtor Fees
\$1,041.75	Travel Costs
\$2,400.00	Lost Wages

The tenants argue that the landlords intentionally breached section 49 of the Act, never intending in good faith to move into the rental unit and caused the tenants compensable damages and gained financially. The tenants stated that they were forced to purchase a home during this period and incurred expenses of realtor fees, travel costs for travelling back to respond to the landlords' notice and the loss of wages.

The landlords dispute the tenants' claims stating that it was the landlords' original intention to occupy the rental unit and that the landlord was acting in good faith when the notice was issued. The landlords state that they were unable to move back into the rental unit as employment was obtained in Toronto. The landlords further argue that the tenants had purchased a home three weeks after the notice was given. The landlord also argue that a realtor's fee is paid for by the seller, not the buyer and as such, the tenants did not suffer this expense as no damages were incurred for the tenants choosing to purchase a property. The landlords argue that the tenant's travel costs are incurred as a result of his employment and is reimbursed by the landlords' employer. The landlords further argue that the tenants' claim for lost wages is based upon a wage estimate for the time period in 2016 and is not relevant to the time period in which the tenants seek compensation.

The tenants also claim that the tenants' right to quiet enjoyment was denied and the tenants seek compensation of \$4,200.00. The tenants state that over the last two months of the tenancy, the landlords' agent caused the loss of quiet enjoyment through repeated harassment. The tenants claim that the landlords repeatedly attended the rental unit for sales showings without providing proper notice. The tenants argued that the landlords were repeatedly told to not attend the rental unit without first providing proper notice. The tenants stated numerous emails were sent to the landlords over the landlords' agent's behaviour and actions. The tenants requested that all communications be done in writing without response from the landlords. The tenants stated that the landlords repeatedly argued that their right to sell/show the rental unit takes precedence over the tenants' rights. The tenants stated that over the two month period the landlords' agent harassed the tenants on 7 different occasions, 4 via email and 3 in person. The tenants stated that these interactions resulted in the tenants' loss of enjoyment of the rental unit over the 2 month period not knowing what the landlords or their agent might do.

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.

In this case, both parties confirmed the landlords served the tenants with the 2 months notice to end tenancy for landlord's use of property (to occupy the rental unit). The tenants are seeking compensation of \$4,200.00 pursuant to section 51(2) of the *Act*. The tenants claimed that the landlords have not used the rental unit for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. The landlords confirmed in their testimony that the rental property was sold as claimed by the tenants on November 10, 2017.

In May 2018, Section 51 of the *Act* was amended. The prior version of Section 51 (2) of the *Act* applies. It states in part,

In addition to the amount payable under subsection (1), if 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 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 this case, the landlords confirmed that the rental unit was sold as opposed to occupied by the landlords. As such, I find that the tenants have been successful in this portion of their claim. The tenants are entitled to \$4,200.00 which is the equivalent to double the monthly rent.

The tenants also seek compensation under section 7 and 67 of the Act in relation to compensable damages. The tenants have argued that despite section 51 of the Act, the tenants are entitled to compensation for realtor fees, travel costs and lost wages as outlined above for \$14,732.54. The landlords have disputed this claim arguing that the realtor fees in the purchase of their home was incurred by the seller and not an expense that was incurred. The landlords also argued that the travel costs incurred were the result of the tenants' employment. The landlords argued that the details for loss of wages were for the period in 2016 and was unrelated to this issue. The landlords argued that the tenants have failed to provide sufficient evidence of any losses incurred as a result of the notice to end tenancy. I find that the tenants have failed to provide sufficient evidence of any losses as a result of the landlords failing to comply with the Act. Further I find that section 51 of the Act addresses compensation for the tenant if the landlord fails to comply with the reasons stated on the notice under section 49 and does not provide for the award of any other costs. On this basis, this portion of the claim is dismissed.

On the tenants claim of \$4,200.00 for the loss of quiet enjoyment, I find that the tenants have been unsuccessful. The tenants claim is for \$4,200.00 which is equal to two months of rent due to the loss of quiet enjoyment. The tenants provided undisputed testimony that over the two month period the tenants had a total of 7 interactions with the landlord or the landlord's agent via email (4 times) and in person (3 times). The tenants stated that these interactions resulted in the tenants' loss of enjoyment of the rental unit over the 2 month period not knowing what the landlords or their agent might do. However, the tenants have failed to quantify the compensation sought and how it was equal to 2 months rent other than it was 7 occasions during the 2 months. I find that the tenants have failed to provide sufficient evidence to satisfy me of the claim of

\$4,200.00 for the loss of quiet enjoyment for the 2 month period. This portion of the claim is dismissed.

The tenants have established a total monetary claim of \$4,200.00 and \$100.00 for recovery of the filing fee.

Conclusion

The tenants are granted a monetary order for \$4,300.00.

This order must be served upon the landlords. 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: November 25, 2019

Residential Tenancy Branch