



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HIGHPOINT REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 51 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant intended to call his wife as a witness, so she was excluded from the outset of the hearing. However, the tenant later indicated that he did not want to call his wife as a witness, so she did not testify at this hearing.

The tenant testified that he sent a copy of his application for dispute resolution hearing package to the landlord on September 7, 2019, by way of registered mail to the service address provided by the landlord in the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated June 29, 2017 ("2 Month Notice"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application on September 12, 2019, five days after its registered mailing, to the address provided by the landlord in the 2 Month Notice.

The tenant confirmed receipt of the landlord's 2 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on June 1, 2014 and ended on September 1, 2017. Monthly rent of \$4,500.00 was payable on the first day of each month. A security deposit of \$2,250.00 was paid by the tenant and the landlord returned the full deposit to the tenant. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The rental unit is a house, where the tenant resided with his wife and four children.

The tenant seeks a monetary order of \$16,940.00 plus the \$100.00 filing fee.

The tenant seeks \$1,440.00 for the landlord owners' belongings being stored at the rental unit, at a rate of \$40.00 per month for 36 months. The tenant stated that the owners should not have stored their items, such as a bed, bed frame, and boxes at the rental unit, and if they had rented a storage facility they would have had to pay there.

The tenant seeks \$5,000.00 for a loss of use of the pool and pool deck for a period of 10 months over two years at a rate of \$50.00 per month. The tenant maintained that there was a pool in the backyard, he rented the house so that he and his family could use the pool, and it was unusable and not heated. He confirmed that he contacted the pool company and they dug the pool to assess if the pool was safe, but the backyard had sunk several feet and the house was sinking. He stated that he contacted the landlord, who was unable to get in touch with the owners, who he said live out of country and do not speak English.

The tenant seeks \$1,500.00 for not having a refrigerator for six months at a cost of \$250.00 per month. The tenant confirmed that the refrigerator was making a "beeping"

noise, so the motherboard had to be replaced but there were no parts available in Japan, where the Tsunami had recently occurred. The tenant claimed that he mailed his own two circuit boards over to Florida, used a small “beer refrigerator” in lieu, and the tenant got a \$10,000.00 refrigerator for \$6,000.00.

The tenant seeks compensation under section 51(2) of the *Act* for double the monthly rent of \$4,500.00, totaling \$9,000.00. The tenant claimed that because the landlord did not use the rental unit for the purpose on the 2 Month Notice, he is entitled to compensation.

The tenant stated that he vacated the rental unit pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The tenant agreed that the effective move-out date on the 2 Month Notice was August 31, 2017. The tenant explained that the reason indicated on the notice was:

- *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).*

The tenant said that the landlord owners did not move into the rental unit, as he was told on the 2 Month Notice. He confirmed that he drove by the rental unit multiple times and it was vacant. He claimed that he saw sale signs on the property and provided a photograph of same, taken on March 18, 2018. The tenant provided the realtor's listing for sale, which he said was posted on October 26, 2017.

The tenant provided copies of two emails, dated May 15, 2018 and May 17, 2018, from two neighbours living across and beside the rental unit. The emails state that the property was vacant after the tenant moved out of the rental unit. The tenant also provided photographs of the inside of the rental unit taken from outside the windows on October 30, 2017 and March 18, 2018, showing that there is no furniture and it is empty in the living room and kitchen areas. The tenant testified that the rental unit sold for \$1.3 million dollars last week.

Analysis

I find that the tenant's claim is within the two-year limitation date to file an application at the RTB, from the end of the tenancy on September 1, 2017, to the filing date on August 28, 2019.

I find that the landlord company named in this application is the proper landlord for the rental unit, as it is named as the landlord on the written tenancy agreement as well as the 2 Month Notice, copies of which were provided for this hearing. I find that the landlord is an agent for the landlord owners of the rental unit, pursuant to the definition of a landlord under section 1 of the *Act*.

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to double the monthly rent (as per the former provision prior to May 2018) if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) stated previously:

51 (2) In addition to the amount payable under subsection (1), 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.

I make the following findings on a balance of probabilities based on the undisputed testimony and documentary evidence of the tenant. The tenant vacated the rental unit on September 1, 2017, pursuant to the 2 Month Notice, which was issued by the landlord for the owners to move into the unit. The owners did not move into the rental unit, left the unit vacant, listed it for sale, and recently sold the property. The tenant provided copies of two emails from neighbours living beside and across the rental unit, indicating that since the tenant vacated, the rental unit was empty until at least May 2018. The tenant provided photographs of the inside vacant unit in October 2017 and March 2018 and the listing for sale made on October 26, 2017.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as the owners did not occupy the rental unit for at least six months after the tenant vacated on

September 1, 2017. Accordingly, I find that the tenant is entitled to double the monthly rent of \$4,500.00 as compensation under section 51 of the *Act*, which totals \$9,000.00.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the tenant's application for \$7,940.00, without leave to reapply. I find that the tenant was unable to justify the \$7,940.00 amount being claimed. I find that the tenant failed all four parts of the above test.

The tenant did not indicate why he chose the amounts that he did for the pool issue, the refrigerator issue and the storage fees. I find that the tenant failed to provide sufficient documentary evidence to show the losses suffered from the above issues. The tenant indicated that the refrigerator was making a noise but did not indicate that it was unusable or unable to properly store food or drinks. The tenant indicated that the owners should not have been storing their items at the rental unit but did not indicate what losses he suffered for the storage, such as a loss of use of space or inability to store his own items. He simply stated that if the owners had stored their items elsewhere, they would have been paying for storage fees. I find that the tenant failed to provide sufficient documentary evidence that the pool was unusable or unsafe because of alleged "sinking" issues.

As the tenant was only partially successful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the total amount of \$9,000.00, against the landlord. The landlord must be served with this Order as soon as possible. Should

the landlord fail to comply with this Order, this 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: January 07, 2020

Residential Tenancy Branch