



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 an Application for Dispute Resolution made on March 9, 2020 (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and recovery of the filing fee.

The hearing was scheduled for 1:30pm on June 2, 2020 as a teleconference hearing. The Tenant attended the hearing at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 23 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served to the Landlord by registered mail on March 19, 2020. Copies of the Canada Post registered mail receipts were submitted in support. The Tenant stated that shortly after serving the Application, he received a text message from the Landlord stating;

“Am not picking up any registered mail u have something to say call or get lost hate to have to show up at your work yard and read between the lines”.

Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the Act, I find that the Landlord is deemed to have been served with the Application and documentary evidence on March 24, 2020, the fifth day after their registered mailing. The Landlord did not submit documentary evidence in response to the Application.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the Act?

Background and Evidence

The Tenant testified that the tenancy began on March 15, 2013. The Tenant stated that near the end of the tenancy, rent in the amount of \$1,435.00 was due to the Landlord by the first day of each month. The Tenant testified that a security deposit in the amount of \$650.00 was paid to the Landlord, which has since been returned to the tenant in full. The Tenant stated that the tenancy ended on November 30, 2019.

The Tenant stated that on September 27, 2019 he received a Two Month Notice to End Tenancy for Landlord's Use of the Property (the "Two Month Notice") dated September 27, 2019 with an effective vacancy date of January 1, 2020 from the Landlord. The Tenant provided a copy of the Two Month Notice in support. The Tenant stated that the Landlord's reason to end the tenancy according to the Two Month Notice 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)"

The Tenant stated that he found a new rental unit and moved out on November 30, 2019 in compliance with the Two Month Notice. The Tenant stated that the Landlord reposted the rental unit online in February 2020. A copy of the Craigslist advertisement was submitted in support. The Tenant stated that he had his friend respond to the advertisement to confirm that it was in fact the same rental unit. The Tenant provided the email conversation dated February 24, 2020 between the Landlord and the Tenant's friend in which the Landlord confirmed the details of the tenancy as well as the address of the rental unit which is the same as the dispute address.

The Tenant stated that the Landlord advertised the rental unit as newly renovated and where asking \$2,000.00 for rent as opposed to the \$1,435.00 that the Tenant has been

paying. As a result, the Tenant stated that the Two Month Notice was served in bad faith as neither the Landlord nor their close family member intended in good faith to occupy the rental unit.

Further to this, the Tenant is seeking compensation in the amount of twelve month's rent pursuant to section 51 of the *Act* as neither the Landlord nor their close family member occupied the rental unit for at least six months beginning within a reasonable period after the effective date of the Two Month Notice. The Landlord did not attend the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 51(2) of the *Act* states that in addition to the amount payable under subsection one, 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 six 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 to 12 times the monthly rent payable under the tenancy agreement.

I accept the Tenant's undisputed testimony that rent was \$1,435.00 and that neither the Landlord nor their close family member ever intended to occupy the rental unit. I also accept the Tenant's undisputed testimony that neither the Landlord nor their close family member occupied the rental unit for at least six months beginning within a reasonable period after the effective date of the notice, as the Tenant submitted documentary evidence that the Landlord re-placed the rental unit after the Two Month Notice was served on Tenant.

Based on the above I find that the Tenant has provided sufficient evidence to demonstrate that it is more likely than not that the Landlord served the Two Month Notice in bad faith as they re-posted the rental unit in February 2020 as being newly renovated and for more rent than the Tenant had been paying. As such, I find that the Tenant is entitled to \$17,220.00 in compensation from the Landlord, pursuant to section 51(2) of the *Act*. As the Tenant was successful in their application, I also find that they are entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As

a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore granted a Monetary Order in the amount of \$17,320.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$17,320.00. The Tenant is provided with this Order in the above terms and 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: June 03, 2020

Residential Tenancy Branch