



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 Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the tenant served the landlord with her application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

Preliminary Issues- Adjournment

At the beginning of the hearing the landlord requested an adjournment because he forgot about the hearing and did not serve the tenant or the residential tenancy branch with his evidence until June 11, 2020, one day before the hearing. The landlord testified that he forgot about the hearing because of the COVID19 pandemic, no other specifics were provided.

The tenant testified that she opposed the adjournment because the landlord had five months notice to prepare for the hearing and he should have properly prepared for the hearing in that time.

Rule 7.8 of the Residential Tenancy Rules of Procedure states:

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time. A party or a party's agent may request that a hearing be adjourned. The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

Rule 7.9 of the Residential Tenancy Rules of Procedure states:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the landlord's failure to prepare for this hearing resulted from the landlord's neglect. The landlord did not provide any details about how the COVID19 pandemic prevented him from remembering or preparing for this hearing. During the hearing I dismissed the landlord's request for an adjournment.

Preliminary Issues- Evidence

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states that evidence should be served on the respondent at least 14 days before the hearing. Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principles of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the tenant testified that she did not have time to reply to the landlord's late evidence. I therefore decline to admit the landlord's late evidence.

The tenant submitted evidence to the residential tenancy branch two days before the hearing. The tenant testified that she did not serve the landlord with this evidence. As the tenant was not served with the tenant's late evidence, contrary to section 88 of the *Act*, I decline to admit the tenant's late evidence.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began in October of 2014 and ended on September 1, 2018. Monthly rent in the amount of \$1,089.00 was payable on the first day of each month. A security deposit of \$525.00 was paid by the tenant to the landlord. The landlord returned the security deposit to the tenant at the end of the tenancy.

Both parties agree that the landlord posted a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on the tenant's door on or around June 26, 2018. The tenant testified that she received the Two Month Notice on June 26, 2018. Both parties agree that the Two Month Notice was dated June 26, 2018, was signed by the landlord, stated an effective date of September 1, 2018 and stated that the reason for ending the tenancy was that 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 testified that she moved out of the subject rental property in accordance with the Two Month Notice. The tenant testified that in February of 2019 she received a text from her old neighbour containing a link to an online advertisement for the subject rental property at a significantly higher rental rate.

The tenant entered into evidence the text message dated February 27, 2019 and the advertisement which states:

NEW LISTING- Avail now or March 15 - BRIGHT HERITAGE 1 BED W/ VIEWS

The tenant testified that since the landlord put the subject rental property up for rent within six months of her eviction, she is entitled to recover 12 months' rent from the landlord.

The landlord testified that he was going through a divorce and had rented a suite a couple of blocks away from the family home so that he could co-parent his young daughter. The landlord testified that he received a Two Month Notice to End Tenancy for Landlord's Use of Property from his landlord and so had to find new accommodation. The landlord testified that he could not find suitable rental accommodation near his family home, so he served the tenant with the Two Month Notice because he had nowhere else to go. The landlord testified that he asked his landlord to inform him if the rental suite he was evicted from became available again because of its proximity to his daughter.

The landlord testified that he began moving into the subject rental property the second weekend of September 2018 and that he lived at the subject rental property until March 15, 2019. The landlord testified that he only moved out of the subject rental property because his previous landlord informed him that his old rental accommodation, close to his daughter, was available. The landlord testified that he decided to move so that he could better parent his daughter.

The tenant testified that she did not believe the landlord moved into the subject rental property because her old neighbour told her that while the landlord attended at the subject rental property, she did not witness him move in. The tenant entered into evidence a witnessed affidavit from her neighbour which states in part:

1. I am the neighbour of [the subject rental property].

2. To the best of my knowledge, the owner of [the subject rental property], [the landlord], did not reside within the unit between September 1, 2019 and March 1, 2019. There was no evidence of movers, moving boxes or any consistent activity within the unit during that period of time.
3. I acknowledge that the owner, [the landlord], was present every few days, usually in the late evenings, doing what seemed to be light renovations/improvements to the unit.
4. In the month of February 2019, I became aware of an advertisement on [an online forum] for [the subject rental property]. See Exhibit A. The advertisement stated the rent was \$1950/month.
5. As of April 2019, new tenants move into [the subject rental property].

The landlord testified that one person's distant observation and belief that he did not move into the subject rental property is not relevant. The landlord testified that he moved in over a number of days and that is why the neighbour did not witness movers and consistent activity. The landlord testified that he moved into the subject rental property and did not reside elsewhere until March 15, 2019. The landlord testified that while he resided in the subject rental property, he painted it, and that this might be the light renovations the neighbour was speaking about. The landlord testified that he arrived at the subject rental property in the evenings because he worked during the day.

The landlord called his ex-wife as a witness. The landlord's ex-wife testified that the landlord moved into the subject rental property in September of 2019, after he was evicted from his rental home, which was located in close proximity to the family home. The landlord's ex-wife testified that the landlord resided at the subject rental property until March 15, 2019 when the landlord moved back into his old rental property so that he could live closer to their daughter.

Analysis

Section 51(2) of the *Act* states that 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.

I find that the tenant has failed to prove, on a balance of probabilities, that the landlord did not move into the subject rental property. I accept the testimony of the landlord's ex-wife over the neighbour's affidavit because I find the ex-wife had direct knowledge of the landlord's residence because of their parenting relationship. I find that the neighbour did not have direct knowledge of the landlord's living arrangements and assigned speculative motivations to the landlord's attendance at the subject rental property.

I accept the landlord's testimony that he started moving into the subject rental property the second weekend in September 2018 which was September 8- 9, 2018. I accept the landlord's testimony that he moved out of the subject rental property on March 15, 2019, as per the advertisement entered into evidence. I find that the landlord resided at the subject rental property from September 8, 2018 to March 15, 2019, just over six months. Pursuant to my above finding, I find that the rental unit was used for the stated purpose, the landlord's use of property, for at least six months' duration. I find that the landlord took steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy. Pursuant to my above findings, I find that the tenant is not entitled to 12 months' rent under section 51 of the *Act*.

When the landlord put the subject rental property up for rent is not relevant to a section 51 claim. What is relevant is the duration of time the landlord resided at the subject rental property and whether or not steps were taken within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy.

As the tenant was not successful in her application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application for dispute resolution is dismissed without leave to reapply.

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 14, 2020

Residential Tenancy Branch