



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing. The Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended the hearing and was given a full opportunity to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The tenant testified that they served the landlord with their application for dispute resolution and evidence by registered mail sent on March 23, 2021 to the address for service provided on the tenancy agreement. The tenant provided a valid Canada Post tracking receipt as evidence of service. The tenant also gave evidence that they subsequently served the landlord with their materials by registered mail sent to two business addresses of the landlord and that they have emailed the landlord to an address ordinarily used for residential tenancy purposes. Based on the evidence I find that the landlord is deemed served with the tenant's materials on March 28, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This periodic tenancy began on April 1, 2018 and ended on February 15, 2021 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use. The monthly rent at the end of the tenancy was \$2,000.00 payable on the 15th of each month. A copy of the tenancy agreement was submitted into evidence.

The tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use dated August 9, 2020. The tenant testified that they negotiated an extension of the tenancy and vacated the rental unit in accordance with the notice on February 15, 2021. A copy of the 2 Month Notice was submitted into evidence. The reason provided on the notice for the tenancy to end is that the landlord's close family member, the father or mother of the landlord or their spouse, will occupy the rental unit.

The tenant testified that instead of the purposes stated on the notice the rental unit was sold shortly after they vacated the rental unit. The tenant is not aware of the landlord or their family members ever occupying the rental unit.

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.

Section 51(2) of the *Act* states that a landlord must pay the tenant an amount that is equivalent to 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,

In the 2 Month Notice dated August 9, 2020, the landlord indicated that the landlord or a close family member, intends to occupy the rental unit.

The tenant gave evidence that instead of being occupied by the landlord or a family member the rental unit was sold. The tenant submitted into evidence a title search for the property showing that it was transferred to new owners.

I accept the evidence that the landlord did not use the rental unit for the purposes stated on the 2 Month Notice. Consequently, I find that the tenant is entitled to a monetary award of \$24,000.00, the equivalent of 12 times the monthly rent of \$2,000.00 payable under the tenancy agreement.

As the tenant was successful in their application they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$24,100. 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: August 17, 2021

Residential Tenancy Branch