



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$10,048.00, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant attended the teleconference hearing, were affirmed and the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Thereafter the tenant was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision.

As the purchaser did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 24, 2021 (Notice of Hearing), application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the purchaser by registered mail dated March 26, 2021, and that the package was addressed to the purchaser's mailing address listed on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 27, 2020 (2 Month Notice) with an effective vacancy date of November 1, 2020. The tenant provided a registered mail tracking number in evidence, which has been included on the style of cause for ease of reference.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. The Canada Post online registered mail tracking website confirms that the registered mail package was marked “unclaimed” and “return to sender”. I find the purchaser was duly served as of March 31, 2021 pursuant to section 90 of the Act, which is 5 days after the registered mail package was mailed. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the Act.

Based on the above, I find the respondent purchaser has been sufficiently served in accordance with the Act, and that this matter is unopposed by the purchaser. Given the above, the hearing continued without the respondent purchaser present in accordance with Rule 7.1 and Rule 7.3 of the RTB Rules, which address consequences for not attending a dispute resolution hearing.

Preliminary and Procedural Matter

The tenant was informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The tenant was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the tenant was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The tenant did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the tenant confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant did not have an email address for the purchaser, the decision will be sent by regular mail to the purchaser.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on August 1, 2017. According to the tenant, monthly rent was originally \$800.00 per month and was eventually increased to \$829.00 per month. The 2 Month Notice was issued on behalf of the purchaser with the following reason, which was not disputed by the tenant:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenant confirmed that they vacated the rental unit on or about October 23-25, 2020, which was before the effective vacancy date listed on the 2 Month Notice listed as November 1, 2020.

The tenant submitted several colour photos, which the tenant stated were taken at the rental property on March 13, 2021. The tenant stated that the rental unit looked empty and that renovations appear were being done. The photos support that renovation debris were outside of the rental unit. In addition, the photos taken from outside of the inside of the rental unit appear to show an empty rental unit. Those photos show the rental unit had no furniture or personal items and the kitchen and adjacent room had no items on the counters, floor or the walls.

The tenant is seeking compensation in the amount of \$10,048.00, which is twelve times the monthly rent of \$829.00 pursuant to section 51(2) of the Act as the rental unit was not used for the stated purpose in accordance with the Act. The amount claimed also includes the \$100.00 filing fee.

The tenant also presented a document that supports that the last monthly rent amount was \$829.00.

Analysis

Based on the undisputed documentary evidence of the tenant and the undisputed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the Act applies and states:

51(2) 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 the landlord or purchaser, as applicable, does not establish that**

(a) **the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and**

(b) **the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

[Emphasis added]

Based on the undisputed evidence before me, I find the purchaser has the burden of proof to provide sufficient evidence that they used the rental unit for the stated purpose within a reasonable period after November 1, 2020 **and** has been used for that purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. I also find that the photo evidence before me was taken March 13, 2021, which is just over 4 months after the effective vacancy date of the 2 Month Notice and that the purchaser has not met the burden of proof by failing to attend the hearing to present evidence and given the evidence before me from the tenant.

I find the tenant's testimony, 2 Month Notice and photos submitted in evidence support that the property was not occupied as of March 13, 2021 by the purchaser or close family member as the photo evidence supports that the rental unit was vacant and that renovations had occurred.

Therefore, I find the tenant is entitled to **\$10,048.00** in compensation from the purchaser, comprised of twelve times the monthly rent of \$829.00 pursuant to section 51(2) of the Act, plus the \$100.00 filing fee pursuant to section 72 of the Act as the tenant's application was successful.

Conclusion

The tenant's application is fully successful.

The tenant has been granted a monetary order pursuant to section 67 of the Act, in the amount of \$10,048.00 as indicated above. This order must be served on the purchaser and may be filed in the Provincial Court (Small Claims) and enforced as an order of that

court. The purchaser is reminded that they can be liable for all costs associated with the enforcement of a monetary order.

This decision will be emailed to the tenant and sent by regular mail to the purchaser.

The monetary order will be emailed to the tenant only for service on the purchaser.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2021

Residential Tenancy Branch