



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recovery of the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenant's agent (the tenant) stated that the notice of hearing package and the submitted documentary evidence was served to the landlord via Canada Post Registered Mail on October 5, 2021. The landlord's agent (the landlord) argued that a notice from Canada Post was not picked up from her mailbox until October 26, 2021 and as such, the landlord requests an adjournment to properly prepare for the hearing. The landlord confirmed that no documentary evidence was submitted. Discussions with both parties confirmed that the notice of hearing package and the submitted documentary evidence was served via Canada Post Registered Mail. The tenant referenced a copy of the Canada Post Customer Receipt Tracking label. Both parties confirmed that the address provided on the Tracking label was the correct mailbox address. A review of the Canada Post online tracking history shows that the package was received by Canada Post on October 5, 2021 and sent out for delivery on October 8, 2021 when a notice card was left indicating where and when to pick up the item. The

online history also shows that a final notice was served by Canada Post on October 13, 2021 of where and when to pick up the item or the item will be returned to the sender.

Section 89 (c) of the Act states in part that an application for dispute resolution must be served by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carried on business as a landlord. In this case both parties confirmed that the mailbox address used by the tenant for delivery of the notice of hearing package was correct. Pursuant to Section 90 of the Act the Canada Post Registered Mail package is deemed to have been received on the fifth day after it is served, in this case October 10, 2021.

The landlord requests that the tenant consent to an adjournment to allow the landlord an opportunity to properly submit rebuttal evidence. The tenant disagrees with the landlord's request to adjourn. On this basis the hearing shall proceed.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$9,704.00 which consists of:

\$8,604.00	Compensation, Sec. 51
\$1,000.00	Compensation, Moving/Cleaning Cost(s)
\$100.00	Filing Fee

The tenant stated that he was notified via messaging that the owner was selling the rental property and was provided with a copy of the contract for purchase. The tenant stated that he was informed that the tenancy must end on September 1, 2021. The tenant stated that he was informed that the new owner would be occupying the rental unit.

The tenant stated that compensation of \$8,604.00 is sought for 12 times the monthly rent of \$717.00 as the tenant has discovered that the new landlord did not occupy the rental unit and that it was subsequently been re-rented.

The tenant also seeks compensation of \$1,000.00 for moving costs which he would not have incurred if he did not comply with the landlord's request.

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.

In this case, both parties confirmed that the tenancy ended on September 1, 2021 as a result of a request by the landlord to end the tenancy or the sale of the property.

Section 51 of the *Act* states in part that a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord an amount equal to 12 times the monthly rent payable under the tenancy agreement if 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 the rental unit is not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, the tenant provided undisputed affirmed evidence that no notice was served by the landlord to the tenancy under section 49 of the *Act*. As such, I find that compensation under section 51 has not been established by the tenant. It is clear that the tenant complied with a verbal/message to end the tenancy from the landlord. A notice under section 49 of the *Act* is required and as such this portion of the tenant's claim is dismissed.

On the tenant's request for compensation of \$1,000.00 for complying with a verbal/message from the landlord to end the tenancy, I find that Section 51 of the *Act* provides for the only compensation a tenant is due when complying with a notice under

section 49. As such, I find that the tenant's claim for moving costs is dismissed without leave for reapply.

Conclusion

The tenant's application is dismissed without leave.

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: November 01, 2021

Residential Tenancy Branch