



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 19, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- a monetary order for compensation in relation to a Notice to End Tenancy for Landlord's Use of the Property; and
- an order granting the return of the filing fee.

The Tenant and the Purchaser attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. The Tenant stated that he did not receive a portion of the Purchaser's Purchase Agreement. Furthermore, the Tenant stated that some of his documentary evidence had not yet been retrieved by the Purchaser.

I notified the parties that if there was a specific piece of evidence referred to during the hearing that they parties felt they were not served with, they have to opportunity to address this during the hearing. In the meantime, I find that pursuant to section 71 of the *Act*, the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for 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 his tenancy began on September 15, 2017. Near the end of the tenancy, the Tenant stated that he was required to pay rent in the amount of \$1,200.00 which was due to the Landlord on the 15th day of each month. The Tenant stated that he vacated the rental unit on May 2, 2021.

The parties testified and agreed that the seller served the Tenants with the Two Month Notice dated April 28, 2021 with an effective vacancy date of July 1, 2021. The Landlord's reason for ending the tenancy on the Two Month Notice was;

"All the conditions of 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 stated that he had an agreement with the Seller for the Tenants to move out early in exchange for compensation in the amount of \$3,600.00. The Purchaser stated that the parties had agreed to compensation in the amount of \$2,400.00 and that there is a cheque addressed to the other Tenant waiting at the lawyer's office which has not yet been retrieved by the Tenants.

The Tenant is also claiming for compensation equivalent to twelve times the amount of rent as the Purchaser has not accomplished the stated purpose of the Two Month Notice. The Tenant stated that the rental property required upgrading and repairs. As such, he is of the impression that the Purchaser ought to have conducted some of those repairs. Furthermore, the Tenant stated that he occupied a portion of the home above the garage, while there were other units available in the rental property, which the Purchaser could have made use of, rather than ended the tenancy.

The Purchaser confirmed that her intent was to move into the rental unit with her family. The Purchaser stated that she took possession of the rental property on May 14, 2021 and her family moved in the rental property where they all continue to reside. The Purchaser stated that the rental property has not been re-rented and has not been renovated. The Purchaser stated that while there may have been rental suites within the rental property, they are not currently being used as separate accommodations. The Purchaser stated that there are no doors separating the suites and that the Purchaser's mother currently occupies the portion of the home which had previously been occupied by the Tenants.

Analysis

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

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

According to Section 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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

(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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Tenant has made a monetary claim in the amount of \$3,600.00. I find that the Tenant has provided insufficient evidence to demonstrate that the Purchaser agreed to compensate the Tenants this amount. Furthermore, I find that this amount of compensation is above what the Tenant is entitled to as part of the Two Month Notice. Instead, I accept that the parties agreed to \$2,400.00 for which a cheque is waiting for the Tenants should they be inclined to accepting it. I therefore dismiss the Tenant's claim for further compensation without leave to reapply.

The Tenant is claiming compensation equivalent to twelve times the amount of rent as the Tenant states that the Purchaser did not follow through on the intended purpose of the Two Month Notice for at least six months after the effective date of the notice.

In this case, I accept that the Purchaser instructed the Seller to serve the Tenants with the Two Month Notice as she and her family intended to occupy the rental unit. I find that the Tenant provided insufficient evidence to demonstrate that the Purchaser has not accomplished the stated purpose of the Two Month Notice. I accept that the Purchaser, after gaining vacant possession of the rental unit, moved into the rental unit with her family, where they continue to reside to this day.

Based on the above I dismiss the Tenant's claim for compensation under section 51(2) of the *Act* without leave to reapply. As the Tenant was not successful with his application, I also find that he is not entitled to the recovery of the filing fee.

Conclusion

The Tenant's Application 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: November 23, 2021

Residential Tenancy Branch