



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 02, 2021 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and to recover the filing fee.

The Tenant appeared at the hearing. The Landlord did not appear at the hearing. I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and evidence.

The Tenant testified that the hearing package and evidence were emailed to the Landlord on August 21, 2021 at the email address used by the parties to communicate about the tenancy. The Tenant submitted email correspondence between the parties including the email with the hearing package and evidence attached.

Based on the undisputed testimony of the Tenant and email communications submitted, I am satisfied pursuant to section 71(2)(c) of the *Residential Tenancy Act* (the “Act”) that the hearing package and evidence were sufficiently served on the Landlord. In coming to this decision, I have considered sections 88(j) and 89(1)(f) of the *Act* as well as sections 43(1) and (2) of the *Residential Tenancy Regulation* (the “Regulations”). I am satisfied the Tenant was permitted to serve the Landlord by email because I accept that the parties communicated about the tenancy by email as shown in the email communications submitted. I am satisfied based on the undisputed testimony of the

Tenant and August 21, 2021 email that the hearing package and evidence were served August 21, 2021. I find pursuant to section 71(2)(b) of the *Act* that the Landlord received the hearing package and evidence on August 24, 2021. In coming to this decision, I have considered section 44 of the *Regulations*. I also find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Tenant. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy was supposed to start August 01, 2021 and be for a fixed term ending July 31, 2022. Rent would have been \$5,800.00 per month due on the first day of each month. The Tenant testified that the \$2,900.00 security deposit was not paid. The agreement was signed by the Tenant June 06, 2021 and the Landlord June 07, 2021.

The Tenant confirmed they never moved into the rental unit.

The Tenant seeks \$25,000.00 in compensation for the Landlord ending the tenancy prior to the Tenant moving in.

The Tenant testified as follows. The Tenant and their partner were living separately and planned to move in together, with their families, to the rental unit. The Tenant signed the tenancy agreement. The Tenant and their partner gave notice ending their current tenancies. The Tenant and their partner sold 70% of their furniture and bought new furniture for the rental unit. On June 29, 2021, the Landlord told the Tenant they might not be able to move into the rental unit. The Landlord provided the Tenant an option to live at another rental unit owned by the Landlord; however, it was not in the same area and was more expensive such that the Tenant did not accept this option. The Tenant

told the Landlord they had already given notice ending their current tenancy. The Tenant's partner was six months pregnant at the time. The Tenant's partner and partner's family ended up having to move into the Tenant's current location until they found another place two months later. The Tenant and their partner ended up having to move into the first place they found because the Tenant's landlord had re-rented the Tenant's unit. The Tenant and their partner had to re-paint the house they ended up renting.

The Tenant submitted the following evidence:

- Invoices for the purchase of furniture
- Email correspondence between the parties
- Tenancy agreement
- Text messages between the parties including one dated June 29, 2021 in which the Landlord tells the Tenant the current tenant in the rental unit cannot move out at the end of July

Analysis

Section 16 of the *Act* states:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Based on the written tenancy agreement, I find the Landlord and Tenant entered into the tenancy agreement June 07, 2021 when the Landlord signed the tenancy agreement. Pursuant to section 16 of the *Act*, the parties were bound by the tenancy agreement as of June 07, 2021, including the August 01, 2021 start date of the tenancy.

Based on the undisputed testimony of the Tenant and text messages, I accept that the Landlord breached the tenancy agreement by not allowing the Tenant to move into the rental unit on August 01, 2021.

Based on the undisputed testimony of the Tenant, invoices and text messages, I accept that the Tenant suffered loss due to the Landlord's breach including loss of possession and use of the rental unit as planned on August 01, 2021 until July 31, 2022.

I do not accept that the loss suffered by the Tenant amounts to \$25,000.00. I find this amount unreasonable in the circumstances. The Landlord is not responsible for the Tenant's choice to purchase new furniture for the rental unit prior to taking possession of the rental unit. Nor is the Landlord responsible for the Tenant's choice to paint the rental unit they ended up in. These are not reasonably foreseeable losses associated to the breach by the Landlord. The reasonably foreseeable loss to the Tenant is the

loss of use of the rental unit as planned as well as the inconvenience caused by the Tenant having to change their plans.

Based on the undisputed testimony of the Tenant, I accept that the Tenant and their partner had to live in the Tenant's current location for two months due to the Landlord's breach. Based on the written tenancy agreement, I accept that the Tenant planned to live in the rental unit for at least one year and find disruption to this plan more serious than if this was to be a month-to-month tenancy. I note that the Landlord did not appear at the hearing to dispute the claim. In the circumstances, I award the Tenant the equivalent of two months of rent at the rental unit to compensate the Tenant for their loss. The Tenant is awarded \$11,600.00 pursuant to section 67 of the *Act*.

Given the Tenant was successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$11,700.00 and is issued a Monetary Order in this amount.

Conclusion

The Tenant is issued a Monetary Order for \$11,700.00. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: February 17, 2022

Residential Tenancy Branch