



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on April 27, 2022, pursuant to the Residential Tenancy Act (the Act).

The Tenant applies for the following relief:

- a monetary order for compensation having received a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 28, 2021 (the Two Month Notice); and
- a monetary order for compensation for monetary loss or other money owed.

On behalf of the Tenant, LR advised that the Notice of Dispute Resolution Proceeding package and a subsequent evidence package were served on each of the Landlords by registered mail. RT acknowledged receipt on behalf of the Landlords.

In addition, RT testified that the Landlords' documentary evidence in response to the application was served on the Tenant by email to LR, who acknowledged receipt on behalf of the Tenant.

The parties were in attendance and were represented by legal counsel. The Landlords and the Tenant acknowledged receipt of the above documents. Therefore, pursuant to section 71 of the Act, I find the parties were sufficiently served with the above documents 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, MS, counsel for the Landlords, advised that the Landlords do not dispute that the Two Month Notice was issued at their request and that they did not accomplish the stated purpose for ending the tenancy by occupying the rental unit. MS also advised that the Landlords do not dispute with the Tenant's claim for compensation in the amount of \$7,200.00. Accordingly, I find the Tenant is entitled to a monetary award of \$7,200.00 as compensation pursuant to section 51(2) of the Act. This aspect of the Tenant's claim has not been considered further in this decision.

Issue to be Decided

Is the Tenant entitled to a monetary award for aggravated damages?

Background and Evidence

The parties agreed the tenancy began in 2013. Although the parties agreed the effective date of the Two Month Notice was October 31, 2021, the Tenant testified that he moved out on October 15, 2021. The parties agreed that rent of \$600.00 was due each month.

The Tenant seeks a monetary award of \$5,000.00 for aggravated damages. LR submitted that an arbitrator may award aggravated damages if there has been significant damage or loss. LR submitted that the Tenant was evicted in bad faith. As a result of the Landlords' deliberate or negligent actions, the Tenant, who is disabled, was left with limited options.

LR also submitted that the rental market was difficult in the Autumn of 2021. Exacerbating the impact of the eviction on the Tenant was his medical needs. LR submitted that the Tenant is restricted in where he can live because he needs to be close to health care.

In addition, LR submitted that the only unit that was available to the Tenant has a host of problems including a collapsed roof, mold, water ingress, and little insulation. Photographs were submitted in support. LR also advised that the Tenant pays \$1,400.00 per month to live in these conditions, which is a significant portion of his \$1,800.00 per month income.

LR also submitted that the eviction and resulting distress has exacerbated pre-existing physical and mental health issues and have reduced the Tenant's self-esteem. LR stated that the Tenant was working towards a Grade 12 qualification but has been unable to continue.

The Tenant testified that he lived in the rental unit for eight years before being evicted. He stated that his life was going well but has not been the same since. The Tenant stated he feels like his life is on hold and referred to his bankruptcy. The Tenant testified that he had to accept his current accommodations or risk being homeless. He testified he would not be in his present situation if he had not been evicted.

In reply, MS submitted that the Tenant has not provided sufficient evidence of the Tenant's current rent, such as a tenancy agreement, or of his income or financial difficulties. In addition, MS stated that the medical evidence is dated before the Two Month Notice was issued and that there is insufficient evidence to show the Tenant's circumstances were aggravated by the Landlord's actions.

Further, MS submitted that aggravated damages are intended for circumstances when a party cannot be fully compensated. In this case, MS submitted that the Tenant is fully compensated under section 51(2) of the Act. MS also submitted that aggravated damages are compensatory and that to award them in these circumstances would be punitive. In addition, MS submitted that any health issues suffered by the Tenant due to the condition of his current living arrangement should be brought against the Tenant's current landlord.

Analysis

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

The Tenant seeks a monetary award of \$5,000.00 for aggravated damages. I accept that aggravated damages are compensatory and nature, and that they are intended to provide additional compensation when the conduct of the other party aggravates the injury.

Policy Guideline #16, referred to by LR, provides the following definition of aggravated damages:

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

For the following reasons, I find there is insufficient evidence before me to grant an award of aggravated damages.

First, while I accept that the Landlords did not occupy the rental unit as indicated in the Two Month Notice, I find there is insufficient evidence of conduct on the part of the Landlords that justifies an award of aggravated damages above the compensation provided pursuant to section 51(2) of the Act. Rather, the evidence and submissions of the Tenant appear to focus on the difficulties experienced by the Tenant after he vacated the rental unit and which were beyond the control of the Landlords.

Second, I find that the Tenant has been fully compensated under section 51(2) of the Act. This provision provides significant compensation – 12 times the monthly rent payable – for tenants who have been evicted in these circumstances. This compensation contemplates situations in which a landlord does not act in good faith.

Third, while I accept that the Tenant faces significant challenges in his personal life, I find there is insufficient evidence before me to find that they arose due to the conduct of the Landlords. Indeed, as submitted by SM, the Tenant's health issues appear to have pre-dated the Tenant's eviction, and there is insufficient medical evidence to indicate the Tenant's health concerns were exacerbated by the Landlords' conduct. In addition, there is insufficient evidence before me to conclude that the Tenant's financial circumstances or choice of rental accommodation were a result of the Landlords' conduct. I agree with MS who submitted that issues related to the condition of the Tenant's current rental unit should be raised with the Tenant's current landlord.

Fourth, I note that Policy Guideline #16 indicates that aggravated damages are "rarely awarded."

Considering the above, and in light of the Landlords' acknowledgment that they did not occupy the rental unit as stated on the Two Month Notice, I grant the Tenant a monetary order for \$7,200.00 as compensation under section 51(2) of the Act.

The Tenant's request for an aggravated damages award is dismissed without leave to reapply.

Conclusion

The Tenant is granted a monetary order in the amount of \$7,200.00. The order must be served on the Landlord. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 20, 2023

Residential Tenancy Branch