



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 as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied 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. The tenant provided affirmed testimony and presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), the application and documentary/digital evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary/digital evidence were served on the landlord by registered mail on March 5, 2018. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the respondent and the address of the rental unit which was purchased by the respondent. The registered mail tracking number has been included on the cover page of this decision for ease of reference.

According to the online registered mail tracking website, the registered mail package was signed for and accepted by the landlord on March 7, 2018. The tenant testified that the only document not served on the landlord was the building permit and as a result, the building permit was excluded from the hearing as it was not served on the respondent in accordance with the Residential Tenancy Branch Rules of Procedure ("Rules").

Preliminary and Procedural Matter

The tenant confirmed their email addresses at the outset of the hearing. The tenant confirmed their understanding that the decision would be emailed to the tenant and that the landlord would have their decision mailed to them.

Issues to be Decided

- Is the tenant entitled to any monetary compensation under the *Act*, and if so, in what amount?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The tenant confirmed that there was no written tenancy agreement between the parties and that the tenancy was based on a verbal agreement. The tenant referred to a previous decision ("previous decision"); the file number of which has been included on the cover page of this decision for ease of reference.

In the previous decision, the tenant disputed the 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The tenant's application was dismissed and a decision was made to uphold the 2 Month Notice. The tenant confirmed during the hearing that she did not pay the last months' rent which was her compensation under the *Act* for having been served a 2 Month Notice that was upheld, thereby ending the tenancy as of February 29, 2016. The tenant testified that she did not vacate the rental unit until March 5, 2016 which means the tenant was overholding the rental unit for five extra days beyond the end of tenancy date.

The tenant made this application on February 28, 2018 which is within the two year timeline provided under the *Act* to make a claim under the *Act*.

The tenant has claimed the following as stated in the Monetary Order Worksheet submitted in evidence and which was further clarified during the hearing:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Twice the monthly rent of \$1,000.00 for not abiding by the reason stated in the 2 Month Notice	\$2,000.00
2. Rent paid at new residence after eviction	\$2,400.00

3. Packing and moving to storage invoice 1	\$456.14
4. Packing and moving invoice 2	\$620.74
5. Packing and moving invoice 3	\$333.21
6. Monthly storage costs X 7	\$747.11
7. Filing fee	\$100.00
TOTAL	\$6,657.00

I note that while the original application stated \$6,758.00 that the correct total adds up to \$6,657.00 as indicated in the table above.

The 2 Month Notice was served by the tenant's previous landlord to the purchaser. The purchaser is referred to as landlord in this decision. The reason stated on the 2 Month Notice is as follows:

"All of the conditions for 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."

[Reproduced as written]

Regarding item 1, the tenant is seeking twice the monthly rent of \$1,000.00 for a total of \$2,000.00 due to what the tenant alleges is that the landlord failed to use the rental unit for the stated purpose on the 2 Month Notice for at least six months after the effective date of the 2 Month Notice. The tenant confirmed that she is not alleging that the landlord re-rented the rental unit within 6 months of the effective date of the 2 Month Notice. Instead, the tenant provided evidence that the landlord began to renovate the rental unit as of March 17, 2016.

Regarding items 2 through 6 were dismissed during the hearing as the tenant does not have any remedy under the *Act* for items 2 through 6 as the 2 Month Notice was upheld in the previous decision and that the tenant's application to dispute the 2 Month Notice was dismissed. In other words, the tenant is not entitled to additional compensation other than what the tenant has claimed for under item 1 which will be addressed later in this decision. As a result, items 2 through 6 are dismissed without leave to reapply as the tenant is not entitled to such remedies under the *Act* when the tenancy ended based on a valid 2 Month Notice that was upheld in the previous decision and for which the tenancy legally ended.

Item 7 relates to the filing fee which will be addressed later in this decision.

Analysis

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

Test for damages or loss

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 in sections 7 and 67 of the *Act*. Accordingly, 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 instance, the burden of proof is on the tenant to prove the existence of the damage/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.

Firstly I have considered section 51 of the *Act* which was in effect at the time the 2 Month Notice was served, which states:

(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) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis added]

In addition to the above, as the reason indicated on the 2 Month Notice stated “All of the conditions for 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.” I have also considered the definition of the word “occupy”. I have referred to the Black’s Law Dictionary sixth edition for the legal meaning of occupy.

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

[My emphasis added]

There is no dispute that the landlord has not re-rented the rental unit to another tenant after issuing the tenant a 2 Month Notice. As a result, I find the landlord has met the definition of occupy as defined in the Black’s Law Dictionary as the landlord took possession back of the rental unit as March 5, 2016 when the tenant finally vacated the rental unit after overholding and the landlord has held possession of the premises without re-renting the rental unit. Black’s Law Dictionary does not define occupy as to reside or to live. In addition, while the tenant attempted to claim that “occupy” means to live in, I disagree.

Therefore, I find that the tenant has provided insufficient evidence to support that the landlord has breached the *Act*, regulation or tenancy agreement which is the first test of the four-part test for damages or loss. Given the above, the tenant's application is **dismissed without leave to reapply** due to insufficient evidence.

As noted above, items 2 through 6 are dismissed without leave to reapply as there is no such remedy under the *Act* when the 2 Month Notice is upheld and an order of possession was granted. As a result, I find the tenant failed to meet all four parts of the test for damages or loss and therefore has provided insufficient evidence.

Regarding item 7, I do not grant the tenant the recovery of the cost of the filing fee as the tenant's claim has no merit.

Conclusion

The tenant's claim has no merit and fails in its entirety.

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: September 24, 2018

Residential Tenancy Branch