



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

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 obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that he did not receive the tenant's application and notice of hearing and only became of the hearing by an e-mail received from the Residential Tenancy Branch on September 6, 2018 advising that the hearing had been rescheduled from 1:30 p.m. to 9:30 a.m. on this same date.

The tenant testified that on June 5, 2018, she sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. The tenant testified that her application and evidence was all sent as one package which included evidence in response to the landlord's application for which a hearing was held on June 20, 2018. The tenant's application was not filed in time to be heard together with the landlord's application so a separate hearing date was scheduled.

The landlord acknowledges receiving the registered mail package back in June 2018 but stated that he thought it was all pertaining to the previous application.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. Even if the landlord was confused about the process, he had sufficient notice as of the September 6, 2018 e-mail from the Branch that this hearing was scheduled. The hearing proceeded as scheduled.

The previous application dealt with the landlord's application for damages and to retain the tenant's security deposit. The landlord failed to attend that hearing and the tenant was awarded a monetary order for the return of the security deposit. This portion of the tenant's application was withdrawn.

Issues

Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The tenancy began on November 1, 2016 with a monthly rent of \$1300.00 payable on the 1st day of each month.

On July 31, 2017, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of September 30, 2017. The grounds for the notice was that the landlord intended to occupy the rental unit.

The tenant vacated the rental unit on October 31, 2017.

The tenant is claiming an amount equivalent to double the monthly rent as compensation for the landlord not using the rental property for his own use after issuing the Two Month Notice.

The tenant testified and submitted evidence that the property was listed for sale on July 13, 2017 and sold on August 21, 2018.

The landlord testified that he notified the tenant that he was trying to sell the property and that he needed to sell for financial reasons.

Analysis

Section 51 (2) of the Act provides that if 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 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.

I find that the landlord did not occupy the rental unit for at least 6 months nor did the landlord have any intention to occupy the rental unit for at least 6 months at the time of issuing the Two Month Notice to End Tenancy. The house was listed for sale prior to the tenant even being served with the 2 Month Notice.

I allow the tenant's claim for an amount equivalent to double the monthly rent and award an amount of \$2600.00, which is double the monthly rent of \$1300.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$2700.00.

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a Monetary Order in the amount of \$2700.00. Should the landlord fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: November 08, 2018

Residential Tenancy Branch