



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, 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 recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on June 8, 2018. The tenant also submitted copies of the Canada Post Registered Mail Receipt as confirmation. The tenant stated that the landlord was served with the submitted documentary evidence via Canada Post Registered Mail on August 30, 2018, but was returned after being "unclaimed" by the recipient. The tenant submitted copies of a printout of the tracking history for the "unclaimed" evidence package. The landlord confirmed that she did not receive the package as she was out of time and that no instructions were left to accept or pick up any mail for the landlord. The landlord stated that the tenant was served with submitted documentary evidence via US Mail "Certified" on October 31, 2018 and again with a second package on November 1, 2018. The tenant disputed this claim stating no package(s) or notice(s) have been received. The landlord was not able to provide any supporting evidence of service.

In these circumstances, as both parties have attended, I find that the tenant has properly served the landlord with the notice of hearing package and the submitted tenant's documentary evidence. Although the documentary evidence was "unclaimed" by the landlord, I find that the landlord has been sufficiently served as per section 90 of

the Act as it cannot be the fault of the tenant, that the landlord failed to provide instructions to accept and claim mail to the landlord when she was out of town. As for the landlord's submitted documentary evidence, I find that although the landlord has claimed that a US Mail "Certified" documentary evidence package(s) were sent on October 31, 2018 and again on November 1, 2018, the tenant has disputed not receiving these package(s) nor has the landlord provided any proof of service. As such, I find that the landlord has failed to provide sufficient evidence of service and that the landlord's documentary evidence is excluded from consideration in this hearing.

Preliminary Issue(s)

During the hearing it was clarified with both parties that the rental unit was designated as unit #A, (3 bedrooms in the upper part of the house and 1 bedroom and a room with a fireplace in the basement). Both parties agreed that there was a separate suite in the basement occupied by another couple. The tenant's application shall be amended to reflect the designation of an address clarified.

During the hearing it was also clarified with both parties that the tenant's second monetary claim portion, #2 for \$34,200.00 (12 months at \$2,850.00/month) shall be amended to \$5,700 (2 months at \$2,850.00). Both parties confirmed that the 2 month notice was dated March 18, 2018, but served upon the tenant by the landlord on March 30, 2018. Both parties confirmed the tenant complied with the 2 month notice by vacating the rental unit by May 30, 2018. Notices received by the tenant before midnight, May 16, 2018 fall under the old legislation.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks an amended monetary claim of \$8,650.00 which consists of:

\$2,850.00	Compensation, Sec. 51(1), 1 months' rent
\$5,700.00	Compensation, Sec. 51(2), 2 months' rent

\$100.00

Recovery of Filing Fee

The tenant seeks monetary compensation as the landlord served the tenant with a 2 month notice for landlord's use dated March 18, 2018. It provides for an effective end of tenancy date of May 30, 2018 and the stated reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse) .

The tenant claims that after complying with the 2 month notice by vacating the premises on May 30, 2018, the landlord failed to compensate the tenant with the one months' compensation as per section 51 of the Act. The landlord confirmed in her direct testimony that no compensation was provided to the tenant.

The tenant further claims that the landlord failed to follow through on the stated reasons for ending the tenancy by moving in and occupying the rental unit. The tenant stated that it was later discovered that the landlord re-rented the unit. In support of this claim the tenant has provided a copy of an email by the landlord dated June 3, 2018. It states in part,

...The doors need to be back tomorrow **because we have some guys renting it for a few months until M. is back** from Costa Rica...

The landlord argued that she did occupy the rental unit by moving into the basement room and room with a fireplace on May 30, 2018. The landlord stated that her son was to occupy the upstairs space on May 30, 2018, but was ill and out of the country for approximately 4 weeks which prevented him from occupying the space. The landlord stated that subsequently, the landlord's son occupied one of the bedrooms upstairs sometime in July 2018. The landlord confirmed that the upstairs space was rented until her son occupied the space.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

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

In this case, both parties confirmed that the landlord served the tenant with the two month notice for landlord's use dated March 18, 2018 which was received by the tenant on March 30, 2018. The landlord also provided undisputed affirmed testimony that no compensation was provided to the tenant in complying with the 2 month notice. As such, I find that the tenant has established an entitlement for \$2,850.00 as claimed.

Section 51 (2) of the *Act* states that if a landlord who gives notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is equal to 2 times the monthly rent payable under the tenancy agreement if, 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 if the rental unit is not used for that purpose for at least a 6 months duration beginning within a reasonable period after the effective date of the notice.

The applicant seeks compensation under section 49 of the *Act* equal to 2 months' rent as per the 2 month notice dated March 18, 2018 which was served to the tenant on March 30, 2018. In this case, the tenant claims that the landlord failed to occupy the rental unit as provided for in the reason listed. The tenant referred to an email dated June 3, 2018 which references "**we have some guys renting it for a few months until M. is back**". The landlord provided undisputed affirmed testimony that she moved into and occupied the 1 bedroom and 1 room with a fireplace in the basement, however, instead of her son occupying the upstairs, 3 bedrooms, the landlord rented out the 3 bedrooms. I note that the rental unit in dispute was only partially occupied as the landlord has provided undisputed evidence that she had occupied the basement portion whereas the upstairs space was re-rented on a short term and then later occupied by the landlord's son. The landlord argued that her son was to occupy the space on May 30, 2018, but while out of the country, fell ill and was delayed in returning to Canada and occupying the space until July 2018. The landlord stated that she was trying to recoup lost rental income until her son was able to occupy the space.

As such, I find on this basis that the landlord failed to take steps to accomplish the stated purpose which was to occupy the rental unit for at least a 6 month period after the effective date of the notice. The tenant is entitled to compensation equal to \$5,700.00 as claimed.

The tenant has established a total monetary claim of \$8,550.00. The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$8,650.00.

This order must be served upon the Landlord. Should the Landlord fail to comply with the order, the 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 14, 2018

Residential Tenancy Branch