



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

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; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:45 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m.

The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenant testified that the Application for Dispute Resolution (the Application) and an evidentiary package were served to the landlord by way of registered mail on May 20, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with the Application and the evidence on May 25, 2018, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave undisputed affirmed testimony that this tenancy began on December 01, 2003. The tenant submitted that the monthly rent was \$929.00, due on the first day of each month.

A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) dated January 21, 2018, was included in the tenant's evidence with an effective date of March 31, 2018. The reason cited on the Two Month Notice is;

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 also provided in evidence:

- A copy of a Notice of Rent Increase form showing the rent for the rental unit being increased from \$896.00 to \$929.00, effective as of January 01, 2017; and
- A copy of an advertisement from the internet showing the tenant's rental unit as being renovated and available for rent as of May 15 or June 1st with a minimum one year lease.

The tenant submitted that they were given a Two Month Notice by their landlord for a close family member of the landlord to occupy the rental unit. The tenant stated that they saw an advertisement for the rental unit on the internet within a couple months of vacating the rental unit. The tenant testified that there are occupants now in the rental unit who are not close family members of the landlord.

The tenant submitted that they are requesting a monetary award in the amount of \$1,856.00, equivalent to two month's rent due to the fact that the landlord did not do what they said that they would do as indicated on the Two Month Notice. The tenant also indicated that they are seeking to recover the \$100.00 filing fee.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 49 of the *Act* establishes that a landlord may issue a Two Month Notice when the landlord or a close family member intends on occupying the rental unit.

As the Two Month Notice was served in January 2018, I find that section 51 (2) of the *Act* that was in force prior to May 17, 2018, is applicable. This section stipulates that a landlord must pay the tenant, in addition to the one month's rent in compensation, an amount that is equivalent to two times the monthly rent 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 the rental unit is not used for that stated purpose for at least six months' duration. I find that the second page of the Two Month Notice that was served to the tenant and provided in evidence also indicates the same information.

Having reviewed the undisputed evidence and affirmed testimony, I accept the tenant's submission that the rental unit was advertised for a new renter with a minimum one year lease within a couple months of the tenant vacating the rental unit. Based on the above, I find that that the landlord did not take steps to accomplish the stated purpose on the Two Month Notice. I find that the one year lease requested is sufficient evidence that the landlord or their close family member did not intend on occupying the rental unit within a reasonable period or for at least six months duration.

For the above reasons I find that the tenant has suffered a loss due to the landlord's actions in violation of section 49 of the *Act*.

Therefore, I find that the landlord is obligated to compensate the tenant as required under section 51 (2) of the *Act* that was in force prior to May 17, 2018.

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.

I find the tenant is entitled to a monetary award in the amount of \$1,858.00, the equivalent of two month's rent payable under the tenancy agreement and as per the notice of rent increase form.

As the tenant is successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary order in the favour of the tenant under the following terms:

Item	Amount
Two Month's Rent Compensation	\$1,858.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$1,958.00

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. 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 27, 2018

Residential Tenancy Branch