



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with the tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee paid for this application. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the tenant is entitled to compensation equivalent to two month's rent under section 51(2) of the Act.
2. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony from the parties, I make the following findings. The tenancy commenced in 2000 or 2001. The tenant was required to pay monthly rent of \$727.00. On August 1, 2008 the tenant was served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) with an effective date of October 1, 2008. The Notice indicated that the reason the tenancy was ending was that the landlord or the landlord's close family member would be occupying the rental unit. The tenant vacated the rental unit September 1, 2008 and received compensation equivalent to one month's rent. The landlord's manager and the tenant conducted a move-out inspection of the rental unit at the end of the tenancy.

The tenant testified that in November 2008 she went to the rental unit and talked to the person renting the unit. The person told the tenant that they were not related to the landlord, that they had found the rental unit through an advertisement in the newspaper and that they were paying rent of \$880.00 per month. The tenant is seeking compensation equivalent to two month's rent since the landlord's close family member did not occupy the rental unit.

The landlord testified that when the tenant was served with the Notice, the landlord's step-granddaughter intended to move in to the rental unit. When the tenant gave notice that she would be vacating early, the step-granddaughter's roommate gave notice to her landlord and that tenancy was to end October 15, 2008. However, the landlord claimed that the rental unit was not ready for occupancy on October 15, 2008 due to the condition the tenant left the rental unit and the step-granddaughter had to rent a different place. As a result, the landlord then proceeded to advertise the rental unit and confirmed that new tenants moved-in in mid-November 2008.

The landlord also testified that the tenant was causing problems during the tenancy and that he did not want her as a tenant any longer. The landlord stated that he thought giving a 2 Month Notice to the tenant would be the best way to end the tenancy for everybody concerned rather than issuing a 1 Month Notice for Cause. The landlord was of the position that the move-out inspection done by the manager and the tenant does not accurately reflect the condition of the rental unit as the manager did not do a thorough inspection. The landlord referred to problems with silverfish, dirty cupboards, the toilet and leaking window seals.

The tenant refuted the landlord's position with statements that there were silverfish during her entire tenancy and referred to the move-out inspection conducted by the manager as to the condition of the rental unit.

Analysis

Issuing a tenant a *2 Month Notice to End Tenancy for Landlord's Use of Property* is provided for under section 49 of the Act. Where a tenant receives a notice to end tenancy under section 49 of the Act, the Act requires the tenant be compensated in accordance with section 51 of the Act. Section 51 of the Act states, in part:

Tenant's compensation: section 49 notice

51 (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.

(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.

Where a tenant is served with a 2 Month Notice, the Act permits the tenant to end the tenancy at any time before the effective date, without consequence to the tenant, provided 10 days of notice is provided by the tenant. Since the effective date of the Notice was October 1, 2008 and the tenant vacated September 1, 2008 the landlord had one month to complete any necessary repairs. The fact the landlord's step-daughter's roommate gave notice to end her tenancy early was not a decision the

tenant had any influence over and I do not find that it has any impact on the tenant's entitlement to compensation under section 51(2) of the Act. Furthermore, for the step-granddaughter's roommate to give notice to end her tenancy early would indicate to me that the landlord had accepted an earlier start date to the step-granddaughter's occupancy yet he did not conduct an inspection of the unit to ensure that it would be in move-in condition. Again, I do not find that the tenant had any influence over the landlord's agreement to permit his step-granddaughter to move in before the effective date on the Notice and it does not affect the tenant's entitlement to compensation under section 51(2) of the Act.

As I heard the landlord state that he wanted to end the tenancy for other reasons related to the tenant's alleged behaviour and I heard that the rental unit is renting for \$153.00 more per month, the landlord was cautioned about the use of a 2 Month Notice where the landlord does not have sufficient evidence to end the tenancy for a reason permitted under the Act. The Act provides consequences for a landlord that issues a 2 Month Notice and does not fulfill the reasons for ending the tenancy as stated on the Notice, including the requirement to pay the tenant under section 51(2) of the Act.

The circumstances of this case are clear that the landlord ended the tenancy citing the reason that his close family member would be occupying the rental unit and the landlord's close family member has not occupied the rental unit. Since the rental unit has since been re-rented to an unrelated person, I am satisfied that a close family member of the landlord will not occupy the rental unit within a reasonable amount of time from the date the tenancy ended. Accordingly, the tenant has established an entitlement to compensation under section 51(2) of the Act and I award the tenant the equivalent of two month's rent or \$1,454.00.

As the tenant was successful with this application, I also award the filing fee to the tenant. In light of this decision the tenant is provided with a Monetary Order in the total

amount of \$1,504.00 (\$1,454.00 + \$50.00). To enforce payment the tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was successful in her application and is awarded a Monetary Order in the amount of \$1,504.00.

January 14, 2009

Date of Decision

Dispute Resolution Officer