

Dispute Resolution Services

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

DECISION

Dispute Codes: ○

Introduction

This hearing was an application by the tenant for compensation pursuant to section 51 of the Residential Tenancy Act (RTA) in respect to a section 49 Two(2) Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord with an effective date of February 01, 2009 (corrected by both parties).

Both the tenant and the landlord appeared and participated in today's conference call hearing and each provided testimony under solemn affirmation.

On the basis of the solemnly affirmed testimony presented and upon careful consideration and reflection of the evidence submitted I have reached a decision.

Issues to be Decided

Is the tenant entitled to a monetary order for the equivalent of two months rent pursuant to section 51(2) of the Residential Tenancy Act?

Background and Evidence:

The tenancy agreement provided that the tenant pay rent of \$750 per month payable on the first day of each month. The tenancy ended on January 03, 2009 after the tenant was served with a 2 month notice under section 49 of the Residential Tenancy Act for landlord use of the property as per Section 49(6)(b) in order to, " renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

The tenant's claim is that at the time of the service of the two (2) month notice to the tenant the landlord stated to the tenant the required work to the rental unit. Subsequent to some inquiry to the landlord and discussion between them the tenant determined to accept she should move and accepted the entitlement of one month's rent as

compensation and advised the landlord she was vacating the rental unit early, on January 01, 2009: actually vacating January 03, 2009. On January 24, 2009 the tenant observed the belongings of new tenants being unpacked into the rental unit, which, the tenant testified makes her question the landlord's motive for issuing the Two (2) month notice for Landlord's Use of property. The tenant provided an internet advertisement for the rental unit dated December 30, 2008 stating immediate availability of the rental unit, and renting the unit for the same amount at \$750, with the only reported difference that the unit did not include utilities.

The tenant claims the landlord did not issue the Notice in good faith. The tenant testified she thinks the motive of the Notice was to raise the rent. The tenant submitted evidence that just prior to the Two (2) month notice, the landlord had given the tenant a legal Notice of Rent increase also effective February 1, 2009, but then issued a Two (2) Month Notice for Landlord's Use. Also, the tenant claims the landlord had previously unsuccessfully tried to have the tenant pay for utilities, which were allegedly included in the rent. Therefore, all together, the tenant now questions the landlord's motive, although the tenant did not dispute the Notice when it was issued,

The landlord provided testimony that he did indeed issue the Notice to the tenant in good faith. He testified the basement rental unit required work including removing carpeting and pouring cement to level the cement flooring as it was not level. Also the washroom was renovated including replacement of the bathtub and toilet. He advertised the rental unit as soon as he knew the tenant was vacating, as she notified the landlord she was leaving a month earlier than intended, and one month before the effective date of the Notice - which the landlord claims he had not planned on. He testified he had to quickly completed the bulk of the required work to the rental unit to mitigate revenue loss, primarily the cement flooring, and accepted new tenants for February 1, 2009, allowing them to move belongings in early on January 24, 2009.

Analysis

The Residential Tenancy Act provides that the landlord must take steps to accomplish the stated purpose for ending the tenancy under section 49.

Section 51 of the Residential Tenancy Act provides as follows:

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.

(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.

The tenant brought into question the landlord's motive for seeking to have her vacate the residential tenancy simply to raise the rent. The tenant did not dispute the Notice when it was issued. Regardless, when the "good faith" intent of the landlord is brought into question the burden is on the landlord to establish that they truly intend to do (or, in this case, did) what the landlord indicates on the Notice to End, and that the landlord is not acting (or, in this case, did not act)dishonestly or with an ulterior motive for ending the tenancy, as the landlord's *primary* motive. The landlord claims he needed to do the work and did it, as stated in the One (1) Month Notice to End Tenancy for Landlord Use. I have no evidence from the tenant disputing the landlord did not actually carry out the work to the rental unit for which the landlord claims the Notice was based upon. If an ulterior motive exists; I do not believe that an ulterior motive was the landlord's *primary*

motive for ending the tenancy. I believe the primary motive is the reason stated in the Two (2) Month Notice to End Tenancy, and therefore I find the landlord has met the requirements of having acted in "good faith" in the issuance of the notice, and that the landlord renovated the rental unit in a manner that required the rental unit to be vacant or empty.

On the preponderance of probabilities I find that the landlord properly served the tenant with the Two Month Notice to End Tenancy, performed the required work, and quickly again rented the rental unit to mitigate loss of revenue. I am further satisfied and find that the landlord provided the tenant with compensation of one month's rent to which the tenant was entitled.

Conclusion

I hereby dismiss the tenant's application.

Dated April 01, 2009