



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for compensation under the *Residential Tenancy Act (Act)*.

The hearing was held by teleconference and was attended by the tenant, the landlord and her legal counsel.

Prior to the hearing neither party provided a copy of a Notice to End Tenancy. During the hearing it was noted that the notice that both parties were referring to may be different, as such I ordered the parties to each submit to me and the other party a copy of the notice to end tenancy no later than February 4, 2010 at 4:30 p.m. Both parties forwarded the notices before 4:30 on February 3, 2010.

In addition, for the parties to comment on the submissions of the notice, I ordered the parties provide me with any written submissions relating to the notices no later than February 11, 2010 at 4:30 p.m. Neither party submitted written submissions addressing the notices.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation resulting from an end to the tenancy for landlord's use and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy was a month to month tenancy for a monthly rent of \$900.00 due on the 1st of the month with a security deposit paid on January 19, 2009 in the amount of \$450.00. There was disagreement between the parties as to the start of the tenancy: either January 1, 2009 or February 1, 2009.

The tenant submitted into evidence:

- A copy of a 1 Month Notice to End Tenancy for Cause issued on M. 31 2009 with an effective vacancy date of May 31, 2009 citing the tenant is repeatedly late

paying rent and an altered notation that states the “tenant has engaged in illegal activity that has or is likely to landlord needs the suit for own use”; and

- A copy of a 1 page Residential Rental Agreement dated January 18, 2009 that declares the tenancy started on February 1, 2009 for a monthly rent of \$900.00 due on the 1st of the month.

The landlord submitted into evidence the following documents:

- A letter dated August 17, 2009 from the landlord’s daughter to the daughter’s strata council requesting approval to rent out her townhouse;
- A letter dated August 21, 2009 from the landlord’s daughter’s strata council declining her request to rent her townhouse;
- A copy of a letter from a local daycare provider confirming the landlord registered her granddaughter in May, 2009 into the preschool program effective September, 2009;
- A copy of the preschool schedule;
- A copy of a receipt for a deposit for September preschool spot;
- A copy of a stub for the landlord’s daughter’s GST credit (October 23, 2009) and Child Tax Benefit (November 20, 2009) showing the landlord’s address;
- A copy of a receipt dated August 1, 2009 for replacement of carpets;
- A copy of a Dispute Resolution Decision dated March 18, 2009 regarding codes CNL (Cancel a Notice to End Tenancy for Landlord’s Use) and PSF (Provide services or facilities required by law);
- A copy of a Dispute Resolution Decision dated September 12, 2008 regarding codes MT (Allow a tenant more time to make an application to cancel a notice to end tenancy), CNC (Cancel a Notice to End Tenancy for Cause) and CNR (Cancel a Notice to End Tenancy for Unpaid Rent or Utilities); and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on M. 31, 2009 with an effective vacancy date of May 31, 2009 citing the tenant is repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant testified that he received a 1 Month Notice to End Tenancy in March 2009 that the landlord had amended to change the reason for ending the tenancy to the landlord’s use. He noted the landlord had allowed 2 months notice and she further agreed to end the tenancy after the 3rd month from when notice was given.

The tenant testified that at the time he did not know the regulations regarding ending a tenancy for landlord’s use and was unaware that he may be entitled to compensation under the *Act*.

The landlord testified that it had been her intent to have her daughter move into the rental unit, as her daughter was going through a divorce. The landlord testified that to date, 7 months after the end of the tenancy, her daughter is not living in the rental unit. The landlord testified that her daughter was not given permission by her strata council to rent out her townhouse, allowing her to move into the landlord's rental unit. She further stated that her daughter put the townhouse up for sale in January 2010.

The landlord's legal counsel argued that the tenant should have submitted his Application for Dispute Resolution to dispute a "Notice to Vacate" within 15 days of receipt of the notice to end tenancy not 3 ½ months after the end of the tenancy.

Analysis

Section 51 of the *Act* does not stipulate a time limit on submitting an application to dispute compensation when issued a Notice to End Tenancy under Section 49. Section 60 states that if the *Act* does not state a time by which an application must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends.

As the tenant has not applied to dispute or cancel a Notice to End Tenancy issued under Sections 49 of the *Act* but rather has applied for compensation under Section 51 of the *Act*, I am not persuaded by the landlord's argument that the tenant should have submitted his Application for Dispute Resolution within 15 days of receiving the Notice to End the Tenancy. I find the tenant is well within the 2 year period allowed under the *Act*.

The second pages of the 1 Month Notices to End Tenancy for Cause submitted by both parties cite different causes to end the tenancy; the first pages are the same. From that I am able to find that the landlord issued a notice to end the tenancy on March 31, 2009 listing an effective vacancy date of May 31, 2009. On the landlord's version, the vacancy date has been altered to June 30, 2009 and signed by the tenant.

Section 49 of the *Act* allows the landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The section further defines a close family member as the individual's father, mother spouse or child.

In order to end the tenancy, the landlord is required to give notice that conforms with Section 52 of the *Act*. This section states a notice, among other requirements, must be, when given by the landlord in the approved form. The Residential Tenancy Branch web site provides landlord's with access to appropriate and approved forms to end tenancies.

The form used by the landlord was a 1 Month Notice to End Tenancy for Cause instead of a 2 Month Notice to End Tenancy for Landlord's Use of Property. The *Act* requires the landlord to use the appropriate form because the approved form provides specific

information to the tenant regarding his rights and/or responsibilities once served with such a notice.

Some of the information on the second page of the form that should have been provided to the tenant is that the tenant is entitled to compensation in the amount of one month's rent. It also advises that should the unit not be used for the stated purpose for at least 6 months the landlord must pay the tenant an amount equivalent to double the monthly rent.

It is apparent that the landlord knew of her responsibility to give the tenant 2 months notice, as she clearly provided an effective vacancy dated of two months from the date of issue on the original 1 Month Notice to End the Tenancy. I find it likely that the landlord also knew there was a specific form to use.

Despite the different causes cited on the two separate versions, as per the testimony and evidence submitted by the landlord, I find the landlord did intend to end the tenancy for her own use.

Specifically the landlord intended to end the tenancy for a close family member (her daughter) to occupy the rental unit. I therefore find the tenant is entitled to compensation pursuant to Section 51(1) in the amount of one month's rent or \$900.00.

From the evidence and testimony the landlord provided the notice to the tenant on March 31, 2009. Further evidence shows the landlord's daughter did not take steps to fulfil the purpose until much later.

For example, in the letter dated August 17, 2009, a month and a half after the end of the tenancy, the landlord's daughter is requesting approval from her strata council to rent her condominium in order facilitate her ability to move into the property. The landlord testified that her daughter did not put the property on the market for sale until January 2010. As a result the landlord's daughter has not yet moved into or is planning to move soon into the rental unit.

Section 51 (2) states that if the landlord has not taken steps to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purposes for at least 6 months beginning within a reasonable period, the landlord must pay the tenant the equivalent of double the monthly rent.

As this hearing was held nearly 1 year after the notice to end the tenancy was issued and based on the evidence and testimony presented, I find the landlord has not taken sufficient steps nor used the rental unit for the stated purpose for 6 months within a reasonable period after the effective date of the notice. I therefore find the tenant is entitled to compensation pursuant to Section 51(2) in the amount of two month's rent or \$1,800.00.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$2,750.00** comprised of \$2,700.00 compensation for landlord's use and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: February 16, 2010.

Dispute Resolution Officer