Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel an One-Month Notice for Cause served on August 7, 2010. At the outset of the hearing the tenant advised that he had received a second Notice, that being a Two-Month Notice to End Tenancy for Landlord Use dated August 15, 2010 and had vacated the unit by August 31, 2010. The tenant stated that although he no longer disputed the One-Month Notice being that he had already vacated, his security deposit was never returned nor was he paid any compensation pursuant to the Two-Month Notice despite the fact that the landlord did not utilize the rental unit for the stated purpose. The tenant was seeking enforcement of the Act including compensation if warranted.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence was what provisions under the Act applied to this situation in regards to the ending of the tenancy and the applicable compensation if any.

- Was the tenant credited with the equivalent of one month compensation as required under section 51(1)?
- Were steps taken by the landlord to accomplish the stated purpose given for ending the tenancy under section 49 within a reasonable period after the effective date of the notice?

- Is the tenant entitled to a refund of the security deposit paid pursuant to section 38 of the Act.

The burden of proof is on the landlord to establish that the Two-Month Notice was issued in good faith, that the tenant was properly compensated according to the Act and that the rental unit was utilized for the stated purpose shown on the notice.

Background and Evidence

Submitted into evidence by the tenant in support of the application was a written chronology of the course of the events. The tenant testified that he received a One-Month Notice which he filed to dispute on August 10, 2010 and then on August 14, 2010 the landlord served a Two Month Notice to End Tenancy for Landlord's Use purporting to be effective on October 15, 2010. The tenant testified that he found another residence for the end of August. However, he felt he was wrongfully forced to move after over 11 years in the rental unit. The tenant testified that after vacating he was denied the return of his security deposit, which was originally $360.00 and interest. The tenant acknowledged that some discussion took place about a debt of $200.00 he evidently owed to the landlord and stated that he would have settled for a refund of $250.00 plus the interest. The tenant testified that he was also owed the equivalent of one month rent, in the amount of $650.00 pursuant to the Two-Month Notice under section 51. The tenant took exception to the fact that after issuing the Two Month Notice to End Tenancy for Landlord's Use the landlord had re-rented his old unit instead of moving in as was the purpose stated on the Notice for ending the tenancy.

The landlord had submitted a copy of the two-month notice to End Tenancy for Landlord's Use issued on August 14, 2010 which indicated that the tenancy was being terminated because, *"The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*" The landlord testified that just after this Notice was served, the parties engaged in a discussion and the tenant agreed to vacate pursuant to the first Notice, that being the One Month Notice to End Tenancy for Cause issued on August 7, 2010. The tenant testified that, because the parties mutually agreed to end the tenancy,

the landlord believed that this effectively cancelled the Two Month Notice to End Tenancy for Landlord's Use and eliminated any and all obligations that were part of such a Notice, including the requirement to pay the one-month compensation and the landlord's obligation to utilize the unit for the stated purpose. The landlord testified that, in any case, a portion of the rental unit was being used by the landlord as the garage now function as the landlord's storage area. The landlord felt that the tenant was not owed any compensation under section 51 (1) or 51(2) of the Act. In regards to the tenant's security deposit, the landlord testified that when the landlord purchased the building, the tenancy was already in place and they had been told that the tenant's security deposit was already returned to the tenant sometime during the tenancy.

Analysis:

When a Two Month Notice to End Tenancy for Landlord's Use has been issued, section 51(1) imposes a mandatory requirement that a tenant receive the equivalent of one month compensation by the landlord.

Section 49(3) of the Act provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. This was the stated purpose shown on the Notice as the reason for ending the tenancy.

Section 51(2) of the Act states that in addition to the amount payable under section 51(1), the landlord or the purchaser must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the notice, or if 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.

In this instance, the landlord acknowledged that the tenant's old unit, with the exception of the garage, was not used by the landlord and was instead re-rented to new tenants.

I find that the landlord's argument that the fact that the tenant vacated pursuant to the first Notice issued under section 47, functioned to erase the subsequent section 49 Notice and free the landlord from all obligations attached to the Two-Month Notice under section 51has no merit.

In this instance a One Month Notice was issued and was disputed by the tenant. A Two Month Notice was then issued indicating the landlord's stated intent to move into the unit. Thereafter the tenant accepted the termination of the tenancy without disputing the Two-Month Notice and moved out.

First of all in regards to a Two-Month Notice for Landlord's Use, the obligations that flow from section 49 are triggered as soon as the Notice is ***issued*** regardless of any subsequent events. The issuing of this Notice was confirmed by the evidence.

In addition, it is not possible to withdraw any Notice to end Tenancy once served unless the tenancy is being reinstated by mutual consent. In this instance the tenancy was not reinstated at all. In fact, the tenant made the decision to comply with one or both of the Notices to vacate after both of these Notices were served on the tenant.

Regardless of whether or not there was any bad faith on the part of the landlord, I find that section 51(1) of the Act imposes a requirement that the landlord pay this tenant $650.00 representing the equivalent of one month rent. I further find that because the landlord neglected to move into the unit and re-rented it to another tenant, section 51(2) requites that the landlord pay this tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement which amounts to $1,300.00.

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue.

The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to merely keep the deposit does not exist.

However, a landlord can keep the deposit to satisfy a liability or obligation incurred by the tenant only if, at the end of the tenancy, the landlord makes an application and obtains an order to retain the amount. In order to make a claim against the deposit, the application for dispute resolution must be filed within 15 days after the forwarding address was received.

Based on the evidence and the testimony, regardless of any verbal discussions, I find that the tenant did not give the landlord written permission to keep the deposit. I find that the landlord failed to make application for an order to keep the deposit within 15 days after being served with the tenant's application for dispute resolution which contained the written service address for the tenant.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit. Accordingly, I find that the tenant is entitled to compensation in the amount of $720.00 representing double the deposit of $360.00 paid by the tenant plus interest of $40.40 in interest for a total of $760.40.

Given the evidence and testimony, I find that the tenant is entitled to $2,760.40 comprised of $650.00 representing the equivalent of one month rent to be paid pursuant to section 51 (1), $1,300 representing the equivalent of double the monthly rent payable under the tenancy agreement to be paid pursuant to section 51(2), $760.40 representing double the security deposit and interest pursuant to section 38 and the $50.00 cost of the application.

Conclusion

Accordingly, I hereby issue a monetary order in favour of the tenant in the amount of $2,760.40. This Order must be served on the landlord 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: September 2010.

Dispute Resolution Officer