



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 51(2) of the *Residential Tenancy Act*, and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of the main floor of a single detached home. It was not disputed that pursuant to a written agreement, the month to month tenancy started on March 1st, 2010. The monthly rent of \$1200.00 was payable on the last day of each month and the tenant paid a security deposit in the amount of \$600.00.

The parties agreed that according to a written agreement and a 2 Month Notice to End Tenancy, the tenancy ended on July 1st, 2010.

They agreed that the landlord returned the tenant's \$600.00 security deposit and that the tenant did not pay rent for the last month's rent, in accordance with section 51(1) of the Act.

The landlord testified that the suite was renovated during the summer. She said that she installed new windows, changed the wallpaper, and has re-rented the unit to new tenants since November 1st, 2010.

The parties' testimony is at odds concerning the circumstances under which the tenancy ended. The landlord testified that on May 8th, 2010, the tenant approached her and told her that she wanted to move out. The landlord stated that she agreed and that on June 3rd, 2010, the parties signed a handwritten notice that the tenancy would end on July 1st, 2010 for the landlord's use of the property.

The tenant denied that she approached the landlord about ending the tenancy. She stated that after being served the handwritten notice, she contacted RTB concerning proper service of documents, that she informed the landlord and that as a result the landlord served her with a 2 Month Notice to End Tenancy for the landlord's use of the rental unit by a spouse or close family member. The tenant said that the repairs done to the unit did not require her to move out and that the landlord acted in bad faith.

The landlord argued that the signature on the 2 Month Notice to End Tenancy is not her signature.

The tenant applied for double the monthly rent pursuant to section 51(2) of the Act.

Analysis

Section 51(2) of the Act states:

(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 parties' testimony was at odds concerning the real purpose for ending the tenancy. In this dispute, the landlord bears the burden of proving that the 2 Month Notice to End the Tenancy was served in good faith. Section 49(6)(b) of the Act states:

A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (b) Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;*

The landlord submitted receipts for the replacement of the windows, removal of wallpaper and painting. The landlord however did not present evidence to justify that the work performed was so extensive that it required for the unit to be vacant.

The landlord testified that on May 8th, 2010 it was the tenant who gave verbal notice to end the tenancy. It is common knowledge that if a tenant decides to end a tenancy, the tenant merely needs to provide the landlord with written notice. The tenant did not do this and the landlord gave no evidence that she requested the tenant to provide such notice. Instead, the parties signed a handwritten agreement to end tenancy on the basis of the landlord's use of the property.

The tenant stated that after contacting RTB, she realized that the agreement was not an approved form and that a proper 2 Month Notice was subsequently completed and signed.

For these reasons, I prefer the tenant's evidence that she had no intentions on moving out and that it was the landlord who initiated steps to end tenancy. The 2 Month Notice specified as reason that the unit will be occupied by the landlord's relative or close family member. There was no evidence presented to that effect.

After reviewing the documentary evidence and the parties' testimony, I find that the landlord's evidence is contradictory. Whether or not the landlord signed the 2 Month Notice, the handwritten notice dated June 3rd, 2010 is sufficient evidence that the tenancy ended for the landlord's use of the property and not because the tenant wanted to move out. Further, I note that the printed RTB Mutual Agreement to End a Tenancy submitted by the landlord was not signed.

On the preponderance of the evidence I accept that the landlord and not the tenant intended to end this tenancy; that it was not a mutual agreement; that the renovations did not require the rental unit to be vacant. Accordingly, I am not convinced that the notice was given in good faith.

Conclusion

The tenant is entitled to double the amount of a month's rent as claimed. Since she was successful, the tenant is entitled to recover the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a monetary order totalling \$2450.00.

This Order may be registered in the Small Claims 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: March 21, 2011.

Residential Tenancy Branch