



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. The landlord was represented at the hearing by G.S.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy had lasted for approximately 6 years and that the rental unit was one half of a duplex. The landlord owned both halves of the duplex. The parties further agreed that in August 2010 the tenant was served with a 2 month notice to end tenancy which stated that the landlord or a close family member would be occupying the unit and that the tenant vacated the unit on September 30, 2010 and provided a forwarding address on September 18, 2010.

The tenant seeks to recover \$820.00 in compensation pursuant to section 51(1) of the Act as he did not receive the equivalent of one month's rent from the landlord. The landlord testified that a cheque was sent to the tenant, which the tenant denied receiving. The landlord agreed that the tenant was entitled to this compensation.

The parties agreed that on October 22, the landlord mailed to the tenant the security deposit and interest. The tenant maintained that the landlord was obligated to return the deposit no later than October 15 as this was 15 days after the end of the tenancy and that he is entitled to an award of an additional \$315.00 pursuant to section 38(6) of the Act. The landlord testified that the tenant did not return the key to a storage area until early October and maintained that the deposit was returned within 15 days of the receipt of that key.

The tenant seeks compensation for loss of use of the backyard of the rental unit. The tenant testified that throughout the tenancy, he had enjoyed use of the full back yard,

including the portion immediately behind the other half of the duplex. In 2010, the landlord extended the porch on the back of the other side of the duplex, installed a shed and erected a gate, effectively cutting off the tenant's access to the other half of the back yard. The portion of the backyard which was immediately behind the rental unit was largely consumed by sheds and the tenant maintained that restricting access to the other half of the back yard significantly reduced the usable area. The landlord maintained that use of the portion of the yard immediately behind the other half of the duplex was permitted at one time but was not an entitlement under the terms of the tenancy agreement. The tenant seeks to recover \$350.00 per month for the three months in which he was unable to use the full yard.

The tenant seeks to recover the value of strawberry plants and a hydrangea which he claims he was unable to retrieve from the property. The tenant claimed that his access to the area where the plants were kept was blocked at the end of the tenancy and he was unable to remove the plants. The landlord testified that the tenant could have asked to retrieve the plants but did not do so and stated that the plants were still available to be retrieved.

The tenant seeks to recover 6 month's rent, moving costs and the costs associated with redirecting his mail and transferring his utility accounts to a new address on the basis that the notice to end tenancy was served in bad faith and that the landlord did not do what was indicated on the notice as the reason for ending the tenancy. The tenant alleged that the notice was served in retaliation to his complaints about the restrictions on the usage of the back yard. The landlord testified that the notice was not retaliatory and that the landlord had intended to move into the other half of the duplex herself and planned to move her aged mother into the rental unit so she would be close by. In preparation for moving into the rental unit, the landlord undertook improvements to the porch of the other side of the duplex and after the tenant had vacated the rental unit, refinished the flooring in the rental unit. The landlord testified that the mother became ill and her health rapidly and unexpectedly declined, resulting in hospitalization and her eventual death. The landlord testified that at present, the rental unit is not occupied.

The tenant also seeks to recover the \$100.00 filing fee paid to bring his application.

Analysis

As it is clear that the tenant has not yet received the equivalent of one month's rent in compensation for having been served with a two month notice to end tenancy and in light of the agreement of the parties on this issue, I award the tenant \$820.00.

The landlord was obligated to return the security deposit within 15 days of the end of the tenancy. I do not accept the landlord's suggestion that the tenancy did not end until the key to the storage shed had been returned. I find that the tenant surrendered possession of the rental unit on September 30, 2010 and that the retention of the key to the storage unit did not extend the timeframe in which the landlord was obligated to deal with the security deposit. I find that the tenant is entitled to recover an amount equivalent to the security deposit pursuant to section 38(6) of the Act and I award him \$315.00.

I find it more likely than not that the use of the yard behind the other half of the duplex was a gratuitous gesture on the part of the landlord and was not a contractual right. Because it was not the tenant's right to use that part of the yard, I find that the tenant is not entitled to compensation for the loss of that use. While it would have been courteous for the landlord to give the tenant notice that the use of this area would no longer be permitted, I am unable to find that the landlord was obligated to give such notice. For these reasons I dismiss the claim for loss of use of the back yard.

I accept that the tenant was unable to easily access his plants at the end of the tenancy, but I find that he had an obligation to advise the landlord that he required access. I find that the tenant failed to do so and therefore abandoned the plants. Accordingly I dismiss the claim for the value of the plants.

Section 51(2) of the Act provides that if a landlord who has served a 2 month notice to end tenancy has not used the rental unit for the purpose stated on the notice for at least 6 months, the landlord must pay to the tenant an amount equivalent to double the monthly rent. Although the tenant claimed 6 months' rent, moving costs, mail redirection costs and the cost of transferring utilities, I find that section 51(2) limits the tenant's claim to \$1,640.00, which is the equivalent of two months' rent. I accept that the landlord had intended in good faith that her mother would move into the rental unit. The landlord had made steps to improve the other side of the duplex and I find that there was no reason for her to do so if she did not intend to reside there as it is clear that she does not intend to rent it. I accept that she had planned to live in the other side of the duplex while her mother resided in the rental unit. I note that there is no evidence that the landlord had a profit motive in evicting the tenant as it appears the rental unit is still vacant. There is no question that the landlord's mother has not moved into the rental unit. However, I accept that the reason she was unable to do so was due to her unexpected death.

It is my opinion that section 51(2) of the Act is designed to penalize landlords who end tenancies unnecessarily and without legal reason to do so. As I have accepted that the landlord ended the tenancy for a reason recognized under section 49 of the Act, I find

that it would be unjust to impose a penalty on the landlord when an act of God prevented her from following through with her plans. For this reason I dismiss the tenant's claim for compensation.

As the tenant has been only partially successful in his claim, I find it appropriate to award him \$50.00, or one half of his filing fee.

Conclusion

The tenant has been awarded a total of \$1,185.00 which represents \$820.00 as compensation for the notice to end tenancy, \$315.00 as the penalty for the landlord having returned the security deposit late and \$50.00 as one half of the filing fee. I grant the tenant a monetary order under section 67 for \$1,185.00. This order may be filed in the Small Claims Division of the Provincial 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: September 30, 2011

Residential Tenancy Branch