



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for Money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and a witness and the landlord and the landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant's evidence was not received by the Residential Tenancy Branch five days before the hearing. However the tenants witness gives sworn testimony that the landlords evidence package was served to him in the landlord's mailbox on November 17, 2011. The landlord was given the opportunity to adjourn the hearing if they required more time to review the tenant's evidence and prepare a response. The landlords declined this opportunity and the hearing proceeded today. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for Money owed or compensation for damage or loss under the Act?

Background and Evidence

Both parties agree that this tenancy started in June 1994. Rent for this unit was \$1,200.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$450.00 on June 01, 1994. The tenancy ended on March 31, 2011 after the landlord served the tenant with a Two Month Notice to End Tenancy.

The tenant testifies that she rented the whole side of the duplex after her brother-in-law moved out. The tenant states the landlord did not provide a written tenancy agreement and the tenant simply took over the tenancy from her brother-in-law. The tenant states she was a good tenant for the 16 plus years of her tenancy and the landlord never had any concerns about her use of the basement area.

The tenant submits that the landlord approached her in December 2010 and informed her that he wanted to take back the basement area and renovate it to rent it out as a basement suite. The tenant testifies the landlord told her she would have to continue paying the same rent just for the upper level of the home or to pay an increased rent of \$1,600.00 to rent both levels of the home. The tenant states she refused to comply with this as she felt it was not a legal request.

The tenant testifies on January 24, 2011 the landlord served her with a Two Month Notice to End Tenancy with an effective date of April 30, 2011; and cited the reason that the rental unit will be occupied by the landlord or the landlords spouse or a close family member of the landlord or the landlords spouse. The tenant moved from the rental unit on March 31, 2011 after informing the landlord's agent of her intent to move before the effective date of the Notice.

The tenant testifies that after they moved out her daily drive took her past the rental unit. Around mid April the tenant testifies that she noticed a For Rent sign had been placed in the upper windows of the duplex. The tenant states she decided to investigate this further and found a listing for the duplex on Craig's List posted on April 16, 2011 at 5.19 p.m.. The tenant testifies that her daughter went to the duplex to collect their mail and spoke to the new tenants living in the upper unit.

The tenants daughter is a witness for the tenant and states that she went to the duplex to collect their mail. A girl around her own age answered the door and they struck up a conversation. This new tenant told the witness that she had seen the For Rent sign, contacted the landlord and rented the unit. The witness also states this new tenant told her she is not a family member of the landlord. The witness states she thinks the upper unit was rented to this tenant in May or June, 2011.

The landlord declines to cross exam this witness.

The tenant testifies that she got a co-worker to pose as an interested tenant and when this co-worker spoke to the landlord the landlord informed them that he wanted to rent the basement unit for \$600.00 or \$700.00 per month. The tenant states this basement unit has now been rented.

The landlord testifies that the tenant only rented the upper unit and the unfinished basement was for the landlords use although it was not closed off or separated from the upper unit. The landlord states the tenant started to use the basement as a play area when her children got older and then she put in a bedroom for one of the children without the landlords permission.

The landlord's agent testifies that her brother wanted to move into the duplex and have roommates to help with the rent. The landlord's agent testifies that because of the extensive renovations required due, in part, to some of the unauthorised work carried out by the tenant, her brother lost his roommates and had to continue living with a family

member next door. The landlord's agent states her brother then decided that he could not afford to rent the duplex as a whole unit and would only rent the basement level. The landlord then decided to advertise the upper level for rent. The landlord's agent states a For Rent sign was placed in the window on May 15, 2011 and an advert was placed on Craig's List around the same time. The landlord disputes that the advertisement provided in evidence by the tenant for this unit was the same one they placed on Craig's List. The landlord's agent testifies her brother continued to pay rent for the unit whilst living next door but later found the commute to his work place was too much so he decided to move back to his father's basement unit.

The landlord's agent testifies that the landlord had evicted the tenant in good faith that his son would live in the rental unit. The upper unit was rented on July 01, 2011 and the basement unit was rented on September 01, 2011.

The tenant seeks compensation equivalent to double her monthly rent of \$2,400.00 as she alleges the landlord did not use the rental unit for the purpose given on the Two Month Notice.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. Section 51(1) and 51 (2) of the Act states

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.

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 argues that the landlord wanted her to give up part of her rental unit namely the basement so the landlord's son could rent this as a separate suite. The tenant argues that the landlord then proceeded to advertise the unit for rent and obtained a new tenant who was not a family member of either the landlord or the landlord's spouse. The tenant questions the landlord's good faith in issuing this Notice to End Tenancy because his son did not rent the unit and it was rented as two separate units to non family members.

The landlord argues that at the time the Notice was served to the tenant the landlords son did intend to live in the rental unit and their intentions were of good faith.

I refer the parties to the Residential Tenancy Policy Guideline #2 which describes a two part test for a good faith requirement when a Notice under s. 49 has been issued: First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. For example, the landlord may intend to occupy... as stated on the Notice to End Tenancy. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord

does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he truly intended to do what the landlord indicated on the Notice to End Tenancy, and that he is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

Having considered both parties arguments I find that it is likely that the landlord's intent for his son to occupy the rental unit is questionable. The landlord has provided no evidence to show they carried out any research prior to evicting the tenant as to the costs involved in renovating the basement, and the reason given that the landlords son found this unit to be too far from his place of work could also have been determined prior to evicting the tenant. I further find that the landlord placed a For Rent sign in the units window in April or May, 2011 one or two months after the tenant moved out and advertised on an internet site on April 16, 2011 less than one month after the tenant moved out. These units were then subsequently re-rented to tenants who were not family members of the landlord or the landlord's spouse.

Consequently I find the landlord has not met the burden of proof to establish that he had a good faith intent to rent the unit to his son and he has not established that steps were taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, I further find the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. Therefore, I uphold the tenants application and find the landlord must pay the tenant an amount that is the equivalent of double the

monthly rent (**\$2,400.00**) payable under the tenancy agreement pursuant to s. 51 (2)(b) and 67 of the Act.

As the tenant has been successful with her claim I find she is entitled to recover her **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the Act.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,450.00** comprised of \$2,400.00 compensation and \$50.00 filing fee. The order must be served on the respondent and is enforceable through the Provincial Court 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: November 24, 2011.

Residential Tenancy Branch