



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant. The Tenant’s Application requested a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee.

The Landlord and the Tenant gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Landlord submitted a copy of evidence to our office on January 18, 2012. The Landlord testified that they did not provide copies of their evidence to the Tenant, despite having the Tenant’s current address.

As the Landlord’s evidence was not served on the Tenant as required by the Act, I declined to consider the Landlord’s written evidence. The Landlord provided oral testimony instead.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation, or tenancy agreement and recovery of the filing fee?

Background and Evidence

The parties confirmed that the tenancy commenced in June 2009 with a monthly rent of \$1,300.00 due on the first day of each month. The parties agree that the tenancy ended on October 31, 2011 when the Tenant moved out in accordance with a Two Month Notice to End Tenancy for Landlord’s Use of Property. At the start of the tenancy the parties agree that the Tenant paid \$650.00 security deposit and \$650.00 pet damage deposit. The parties agreed that the Tenant allowed the Landlord to keep \$529.00 from

the security deposit for carpets, hydro, and gas costs. The parties agreed that the balance of the security deposit and all of the pet damage deposit, a total of \$771.00, was returned to the Tenant.

The parties agree that a Two Month Notice to End Tenancy for Landlord's Use of Property was issued by the Landlord on August 13, 2011, which stated that the tenancy was no end no later than November 01, 2011. A copy of the Two Month Notice was submitted into evidence by the Tenant, and it states that the reason for issuance was, "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse".

The Landlord testified that she made a mistake on the Notice and that she meant to indicate a different reason for issuance. The Landlord stated that she meant to tick the box on the Notice form which stated, "the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant". The Landlord stated that the Tenant knew that they are trying to sell the house and that they needed to do renovations and improvements to the rental unit. The Landlord stated that the rental unit was dirty and they wanted to get rid of the Tenant. The Landlord stated that they do not require permits or legal approval from the City to do their renovations and that they were not ordered by the City to do the renovations. The Landlord stated that they have been working on painting; carpet replacement in some rooms; and the remaining items they are considering doing are replacing the appliances and kitchen and bathroom tile. The Landlord stated that they are mostly doing the renovations themselves while trying to sell the rental house. The Landlord stated that the Tenant does not owe them any further money and that they do not feel she is not entitled to her claim.

The Tenant testified that she was provided with one month's free rent for October 2011 by the Landlord in accordance with the Act's requirement when a landlord issues a Two Month Notice. The Tenant stated that she is claiming two month's rent as compensation from the Landlord as the Two Month Notice was issued falsely, and not for the reasons stated or allowed by the Act. The Tenant stated that she lived in the rental unit for two and a half years with her elderly mother and that they had not intended to move out, but were required to do so by the Landlord's Notice issued. The Tenant stated that the house had been for sale several times while they lived there, yet it had not sold, and she had remained a Tenant despite it being for sale. The Tenant stated that in August of 2011, the City found that the Landlord had illegal suites in the downstairs of the house and as a result those tenants had to move out. The Tenant stated that she lived in the upper part of the house that was allowed to be legally occupied. The Tenant stated that although the Notice told her that the Landlord planned to move into the house, she knew this was not the case as the Landlord's son had told her that they were working on the house to sell it, as they planned to move out of the country. The Tenant stated that she would have stayed in the house during the renovations done by the Landlord and worked out a schedule with the Landlord for the renovations. The Tenant stated that the Landlord started the painting renovations while the Tenant was still living in the rental unit, so she does not understand why it needed to

be vacant for them to do the work. The Tenant stated that her husband offered to assist the Landlord if they needed any work done as he is an experienced tradesperson. The Tenant stated that moving was a huge inconvenience and they would have rather stayed in the rental unit until the house sold.

In addition to the two month's rent in compensation, the Tenant is seeking recovery of the filing fee paid for this Application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord did not move into the rental unit, which is the reason stated on the Notice. I also find that the Landlord did not amend the Notice in writing to the Tenant or reissue a new Notice to the Tenant with a corrected reason. I also reject the Landlord's argument regarding renovations. The Landlord did not undertake extensive renovations that meet the requirements of section 49(6) of the Act, as the Landlord was doing work that did not require permits or approvals by law, and the type of renovations did not require the rental unit to be vacant. I am satisfied that the Tenant was willing to work out a renovation schedule with the Landlord, however, there is no evidence provided that this was ever offered prior to the Two Month Notice being issued. I find that the Landlord has contravened the Act and the Tenant is entitled to compensation in accordance with section 51(2) of the Act.

For the information of the parties section 51 of the Act states:

Tenant's compensation: section 49 notice

51 (1) 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

I find that the Tenant is owed two month's rent in the amount of \$2,600.00. As the Tenant has succeeded in their Application, I find that the Tenant is entitled to recover the \$50.00 fee for this proceeding.

I order that the Landlord pay \$2,650.00 to the Tenant.

Conclusion

I find that the Tenant is entitled to a monetary order in the amount of **\$2,650.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims).

The order accompanies the Tenant's copy of this decision. .

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 15, 2012.

Residential Tenancy Branch