



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC.

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act. The tenant was seeking the equivalent of two month's rent, payable under section 51(2) when a Two-Month Notice to End Tenancy for Landlord's Use, has been issued under section 49 of the Act and the landlord fails to utilize the unit for the purpose stated in the Notice.

Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to compensation.

The burden of proof is on the landlord to establish that rental unit was utilized for the stated purpose shown on the notice.

Background and Evidence

The tenancy began in May 2011 and ended on October 15, 2011, pursuant to a Two Month Notice to End Tenancy for Landlord's Use served on the tenant. The rent was \$650.00. In compliance with section 51 of the Act, the tenant was given one month rent in compensation for leaving the unit. The stated intention was to use the unit to house the landlord's daughter who needed to reside in the unit.

Submitted into evidence was a copy of the Two Month Notice to End Tenancy for Landlord's Use dated September 2, 2011, purporting to be effective October 31, 2011. Also in evidence were copies of receipts and a copy of a rental vacancy advertisement dated January 20, 2012 indicating that a "*Large 2 BR Basement*" was available for rent.

The tenant testified that she was given a Two Month Notice to End Tenancy for Landlord's Use and moved out on October 15, 2011. The tenant testified that she knew another person who lived in the complex and in checking with this individual after she had vacated, she was informed that the unit remained unoccupied. The tenant testified that, in January she happened to notice an advertisement on line for the rental unit and

when she returned to see if anyone was living in the unit, nobody answered the door. According to the tenant, in peering through the window, it was clear to her that the unit was vacant because there was no furniture or any people inside.

Because the landlord did not use the unit to house a close family member within a reasonable time after terminating the tenancy, the tenant is claiming entitlement to compensation for the equivalent of 2 months rent in the amount of \$1,300.00.

The landlord's daughter, representing the landlord, testified that the 2-month notice was given to the tenant in good faith in order to allow her family to occupy the unit and provide better care for her father. The landlord testified that she did move into the unit shortly after the tenant left and, in fact, has remained living in the unit ever since. The landlord explained that, although she left to stay with other relatives temporarily during a period of convalescence after a difficult child-birth, she and her family have resided in the unit without interruption ever since the tenant left and they still live there. No evidence to verify this occupancy was submitted by the landlord.

With respect to the for-rent advertisement submitted into evidence by the tenant, showing that the unit was available for rent in January 2012, the landlord testified that they had decided to re-rent the unit and placed the ad, but that they changed their mind and the advertisement was quickly removed without approving any new renters.

Analysis:

Section 49(3) of the Act provides that a landlord is entitled to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. All agreed that this was the stated purpose given for ending the tenancy.

Additional Evidence

During the hearing the respondent landlord requested to be allowed to submit documentary evidence to support her position, after-the-fact. I find that Rule 4 of the Residential Tenancy Rules of Procedure states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch.

It must also be and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding except when the date of scheduled for the dispute resolution proceeding is too soon to allow the five (5) day requirement in a) to be met. In such a case, all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding. (My emphasis).

The Landlord and Tenant Fact Sheet contained in the hearing package states that “copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible..”

Given the above, I declined to accept any further late evidence that was not properly served on the other party in advance of the hearing date. However, verbal testimony from the landlord was considered.

Effective Date of Notice

I find that the Two Month Notice to End Tenancy for Landlord's Use issued on September 2, 2011 and purporting to be effective October 31, 2011, contravened the Act in regard to the effective date on the Notice. Section 49 of the Act states that a landlord may end a tenancy for landlord use by giving notice to end the tenancy effective on a date that must be:

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, on which the tenancy is based, that rent is payable under the tenancy agreement. (my emphasis)

Section 53 (1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the Act, the effective date of the notice is deemed to be changed to the earliest date that complies with the section.

In the case of this particular Two Month Notice to End Tenancy for Landlord's Use which was dated September 2, 2011, I find that the earliest date the Notice would be effective, under the Act, was November 30, 2011, not October 31, 2011. Therefore, I find that this tenant was not given adequate Notice to end the tenancy.

That being said, however, I find that the tenant willingly vacated in accordance with the flawed Notice and she did so with a good faith expectation that the landlord's close family member would be residing in the unit on her departure.

Two-Months Rent Compensation

Section 51(2) of the Act states that in addition to the one month payable under section 51(1), the landlord must also 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 effective date of the notice, or 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's stated intent was to move into

the unit and the tenant readily accepted the termination of the tenancy on this basis without dispute at the time.

I find that, while it is difficult for a party to prove that something *did not* occur, the tenant succeeded in submitting tangible documentary evidence that called into question the landlord's stated intent shown on the Notice. I find that this evidence, in the absence of any other evidence from the landlord to prove otherwise, cast doubt on the landlord's claim that the unit was being occupied by a close family member beginning within a reasonable period and continuing for at least six months.

I find that if this landlord was living in the unit as stated, she would certainly have access to documentation that would verify her residential address. However, the landlord failed to submit such evidence and relied solely on verbal testimony that was disputed by the applicant tenant.

Based on the evidence before me, which consisted of a copy of a rental advertisement and the disputed verbal testimony of the participants, I find that the landlord did not furnish adequate proof that the landlord had fully complied with section 51(2)(a) by converting the unit into a close family-member's primary residence within a reasonable time after ending the tenancy and then continuing to use it for that purpose, without interruption, for a minimum period of 6 months.

Given the above, I find that the tenant is entitled to receive \$1,300.00 comprised of double the monthly rent of \$650.00.

Conclusion

Based on the testimony and evidence, I hereby grant the tenant a monetary order in the amount of \$1,300.00 against the landlord. This Order must be served on the landlord in person or by registered mail 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: April 03, 2012.

Residential Tenancy Branch