



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing I determined that the landlord had not sufficiently served his evidence upon the tenant and the tenant stated she did not receive any evidence from the landlord. The landlord's evidence submitted to the Residential Tenancy Branch consisted of a one page letter purportedly signed by the landlord's new tenant. I have applied appropriate evidentiary weight to this document as described in the analysis of this decision.

Issue(s) to be Decided

Has the tenant established, on the balance of probabilities, that the landlord did not use the rental unit for the purpose stated on the 2 Month notice to end Tenancy for Landlord's Use of Property issued to her?

Background and Evidence

The following information was undisputed by the parties:

- The tenancy commenced in February 2002;
- The landlord served the tenant with a 2 Month notice to end Tenancy for Landlord's Use of Property (the Notice) at the end of September 2011 with an effective date of December 1, 2011;
- The reason for ending the tenancy, as stated on the Notice, was that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse;

- The Notice was the subject of a previous dispute (file no. 782746) which was settled by the parties;
- The tenant did not pay rent for November 2011;
- The tenant vacated the rental unit in mid-December 2011;
- The tenant did not pay rent for December 2011 and the landlord is still in possession of the tenant's security deposit;

The tenant submitted that in 2008 her rent was increased to \$700.00 per month. The landlord acknowledged that the tenant's rent had been \$700.00 but that it was reduced to \$650.00 in the last couple of months of the tenancy in exchange for the tenant not parking in the driveway. The tenant submitted that she had only one month of reduced rent.

Both parties provided consistent testimony that the tenant rented a two bedroom unit in the front of the house with an entrance on the left hand side of the house. It was also undisputed that during the tenancy the landlord used former one-bedroom unit located at the rear of the house for his own personal purposes.

The tenant has requested she be awarded the equivalent of two month's rent, or \$1,400.00, pursuant to section 51(2) of the Act because the landlord has re-rented the rental unit. The tenant testified that shortly after her tenancy ended she observed a "for rent" sign posted for a two bedroom unit with the landlord's phone number. On December 22, 2011 the tenant observed a newspaper advertisement for a 2 bedroom unit in the same area containing the landlord's phone number. The newspaper advertisement lists the unit for rent at \$750.00 per month.

The tenant provided a photograph of the "for rent" sign and the newspaper advertisement as evidence for this proceeding.

The landlord stated that after the tenancy ended he renovated the rental unit and reconfigured the layout of the two basement units by taking one of the bedrooms from the rental unit and reallocating it to the rear one-bedroom unit. The landlord explained that the rear unit was provided the second bedroom by relocating one wall. The landlord stated that he rented out the rear unit and that the landlord now uses the front unit (the former rental unit) for his own purposes.

The tenant questioned the landlord's submission by stating that she continues to live in the area and has observed a man (not the landlord or his family member) walk towards the left hand side of the house, where the entrance to her former rental unit is located,

on several occasions and that the rear unit would be accessed by going to the right of the house. The landlord responded by stating he installed a gate in the fence so that the new tenant could go along the left side of the house to access the rear unit. The tenant was of the position that going to the left was a much less direct route.

The landlord's new tenant was called as a witness. The witness testified that he has lived in the rear unit of the house since February 1, 2012, after seeing the "for rent" sign in January 2012, and that the landlord uses the front unit for his personal use. The witness testified that he pays \$700.00 per month for the rear two bedroom unit.

The tenant questioned the new tenant as to the layout of his unit as she had been in the rear unit several times in the past and could not conceive the two bedroom layout. The witness's answer was essentially unintelligible and the witness deferred the question to the landlord to answer.

Analysis

Where a landlord gives a tenant a 2 Month Notice to end Tenancy for Landlord's Use of Property, as provided under section 49 of the Act, the landlord must compensate the tenant pursuant to section 51 of the Act.

Section 51(1) of the Act provides for compensation equivalent to one month of compensation for receiving a 2 Month Notice and I am satisfied the tenant has received this compensation. However, section 51(2) provides for additional compensation to the tenant where the landlord does not fulfill the stated purpose for ending the tenancy. I have reproduced section 51(2) of the Act below:

- (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.

At issue in this case is whether the landlord used the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective date of the Notice.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Accordingly, the tenant bears the burden to prove her claim, based on the balance of probabilities.

It is undisputed that the landlord advertised for a two bedroom unit shortly after the tenancy ended and that a new tenant began residing at the residential property shortly after the tenancy ended. It was also undisputed that the new tenant usually walks down the left hand side of the house which is closest to the entrance of the former rental unit.

I find, on the balance of probabilities, that the landlord did not use the rental unit for the stated purpose. I make this finding based upon the following considerations:

- The landlord asserted that he reconfigured the layout of the two living areas on the ground floor by relocating a wall; however, the landlord did not provide any receipts, invoices, or photographs of such renovation.
- The landlord asserted that he installed a gate in the fence so that the new tenant could access the rear unit from the left hand side of the house; however, the landlord did not provide receipts, invoices, or photographs of such an alteration.
- During the hearing, the witness easily provided answers to questions so long as the questions were consistent with the information contained in the letter submitted by the landlord; however, the witness could not clearly describe the layout of the rear unit when asked during the hearing.

In light of the above, I find the tenant has established an entitlement to compensation equivalent to two month's of rent pursuant to section 51(2) of the Act.

Given the tenant was paying rent of \$700.00 for several years and the landlord did not provide evidence that the tenant's rent was reduced beyond a temporary reduction, or in writing, I grant the award based upon a monthly rent of \$700.00.

I further award the \$50.00 filing fee to the tenant. Accordingly, the tenant is provided a Monetary Order in the total amount of \$1,450.00 to serve upon the landlord and enforce as necessary.

As both parties were of the understanding that any matters involving rent for December 2011 and the security deposit were not part of this application I have not addressed those issues in this decision. Further, the issue of the legality of the rent increase in 2008 was not part of this application and was not addressed in this decision. The parties remain at liberty to make applications with respect to those matters if they so chose.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the amount of \$1,450.00 to serve upon the landlord.

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: June 01, 2012.

Residential Tenancy Branch