



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenants' application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented 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.

Issue(s) to be Decided

Are the tenants entitled to compensation equivalent to two month's rent pursuant to section 51(2) of the Act?

Background and Evidence

The tenants were residing at the rental unit since September 2007. In July 2011 the landlord purchased the property. I was not provided a copy of a written tenancy agreement although both parties submitted that the tenants were paying the current landlord rent of \$3,000.00 per month on a month-to-month basis.

The tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated April 25, 2012 with a stated effective date of June 30, 2012. The reason for ending the tenancy, as stated on the Notice, is that the rental unit would be occupied by the landlord or the landlord's spouse or a close family member (father, mother, child) of the landlord or landlord's spouse. The tenants did not pay rent for June 2012 and vacated the rental unit June 30, 2012.

It is undisputed that at the end of August 2012 the rental unit was advertised for rent at a monthly rent of \$3,995.00 – a 33% increase. The tenants observed a "for rent" sign posted on the front yard of the property and observed a posting for the property on Craigslist. It was also undisputed that the rental unit remains vacant.

The tenants are seeking compensation equivalent to two month's rent since the landlord failed to fulfill the stated purpose on the 2 Month Notice. The tenants were of the position the 2 Month Notice was given in bad faith and intended to circumvent rent increase limitations imposed by the Act.

The landlord provided the following oral submissions during the hearing:

- The landlord's son was in a fixed term tenancy set to expire August 2012 and then continue on a month to month basis.
- At the time of issuing the 2 Month Notice it was intended that the landlord's son would move into the rental unit since his fixed term tenancy was expiring in August 2012.
- The landlord's son moved some of his possessions into the rental unit for approximately two weeks in mid-July 2012 during which time it was determined that the rental unit required significant repairs and renovations due to neglect and deterioration.
- It was unknown how long the repairs and renovations would take to complete so in July 2012 the landlord's son orally committed to his current landlord that he would continue his tenancy for another year. The landlord's son moved back to his rental unit on July 30, 2012.
- The landlord's son did not sign a new tenancy agreement with his current landlords but committed to another year of tenancy orally because they were nice and friendly and he did not want to see them miss out on the opportunity to rent their unit for the school year.
- The bulk of the repairs and renovations were completed in August 2012 and the rental unit was advertised for rent because the landlord's son had already committed to his current landlords to continue his tenancy with them.

The landlord had also provided written submissions prior to the hearing. I noted the following the written submissions were inconsistent with the verbal testimony. Of particular note:

- The landlord's written submission was signed by the landlord and indicates that he, not his son, would be moving into the rental unit that he purchased.
- The landlord stated in his written submission that it was in August 2012 that he was "forced" to either end his current tenancy or renew the existing contract with his current landlord.
- The landlord stated in his written submission that he "had no choice but to renew my contract and leave [the rental unit] unoccupied".

The landlord did not provide a copy of the tenancy agreement that was set to expire August 2012. I provided documentary evidence that would corroborate statements that the landlord's son moved into the rental unit in July 2012. Nor was I provided documentary evidence to indicate that significant repairs were the reason the landlord's son could not continue to reside in the rental unit or return to the rental unit within a reasonable amount of time.

In contrast, the tenants provided copies of the advertisements that indicate the rent unit has been "immaculately maintained and now updated with fresh paint, new carpet and new flooring in the kitchen." Further, the advertisement corroborated the tenant's position that the rental unit was advertised for rent at a significantly greater amount less than two months after their tenancy ended.

Analysis

Where a tenant receives a 2 Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. Compensation for receiving the 2 Month Notice is provided under section 51(1) and is equivalent to one month's rent. Compensation payable to tenants under section 51(2) is in addition to compensation payable under section 51(1) and is intended dissuade landlords from issuing a 2 Month Notice to end a tenancy for ulterior motives.

The tenants have been provided compensation under section 51(1) of the Act. The issue to determine in this case is whether the tenant's are entitled to additional compensation provided under section 51(2) of the Act.

Section 51(2) provides:

(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.

[my emphasis added]

Since section 49 of the Act permits a landlord to end the tenancy for landlord's use in a variety of circumstances, including demolition or conversion of the rental unit to a non-residential use, I find the applicability of paragraphs (a) or (b) above depends upon the reason given on the 2 Month Notice.

As the 2 Month Notice in this case was given so that the landlord, landlord's spouse, or close family member of the landlord would occupy the rental unit I find paragraph (b) applies. Accordingly, the landlord, landlord's spouse or landlord's close family member had to occupy the rental unit for at least 6 months beginning within a reasonable period after the effective date of the notice. There is no exemption from this requirement and failure to do so shall result in additional compensation payable to the tenants in the amount equivalent to two month's rent.

It is undisputed that the landlord, landlord's spouse or landlord's close family member has not occupied the rental unit for six months. Thus, the question is whether a reasonable period of time has elapsed.

While repairs and renovations may have been necessary or desired, based upon the landlord's testimony and the rental advertisements, I accept that the rental unit was suitable for occupation in late August 2012. I also reject the landlord's position that his son could not move in because he has been "forced" to enter into another year long tenancy with his currently landlord. As the landlord's son acknowledged his tenancy continued on a month-to-month basis after August 2012 I find it was his choice, based upon his own free will, to continue to live in his current rental unit. Given the rental unit was suitable for occupation in late August 2012 and the landlord's son was in a position to move into the rental unit at anytime thereafter, with one month's notice to his current landlord, I am satisfied that a reasonable period of time has elapsed.

Although I found the landlord's submissions to be inconsistent and largely lacking corroborating evidence, it remains undisputed that the landlord, or his spouse, or his close family member have not occupied the rental unit for at least six months and I have found that a reasonable period of time has elapsed.

In light of the above, I find the tenants entitled to additional compensation equivalent to two month's rent under section 51(2) as they have claimed. I also award the filing fee to the tenants.

Provided to the tenants is a Monetary Order in the total amount of \$6,100.00 to serve upon the landlord and enforce as necessary. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an order of the court.

Conclusion

The tenants have been provided a Monetary Order in the total amount of \$6,100.00 to serve upon the landlord and enforce as necessary.

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: January 18, 2013

Residential Tenancy Branch

