



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 in response to an application by the tenant for a Monetary Order pursuant to Section 51(2) of the *Residential Tenancy Act* (the Act), and recover the filing fee.

Both parties attended the hearing and the landlord acknowledged receiving the evidence of the tenant on or about the beginning of January 2014. The landlord testified they sent the tenant and the Branch their evidence on January 21, 2014. The tenant testified they received the landlord's evidence on January 24, 2014. As preliminary I find the landlord's document evidence inadmissible as it was not served to all parties *at least* 5 days before the hearing – in this matter, *at least* means to the exclusion of the day a party receives the evidence and the day of the hearing. None the less, the landlord had opportunity to provide relevant testimony of their document evidence.

Preliminary matters

At the outset of the tenancy the landlord argued that the Residential Tenancy Act does not apply to this tenancy as the tenancy was not supported by a written tenancy agreement, and that the applicant's use of the residential house was also for a commercial purpose. The landlord and tenant agreed that the tenant was employed by the landlord and that they worked out of a portion of the residential house – a room of the house identified as the 'dispatch room', in concert with another room routinely used by the landlord's commercial venture – the landlord's 'truck business' - utilized by the landlord's trucking employees and the customers of the business. The parties also agreed that the laundry room of the house was also shared by another tenant operating a hair dressing salon from that same room. The tenant does not dispute that the house was partly shared by the business, but that the area which they rented was exclusive to her tenancy. The landlord testified that approximately 40% of the house was used by the landlord. The tenant testified that they had exclusive use of approximately 75-80 % of the house – or that the landlord occupied no more than 25%. On preponderance of the parties' evidence, I find that despite the house being shared by a commercial

venture, it does not adequately support the criteria of Section 4 of the Act which states, in part,

What this Act does not apply to

4 This Act does not apply to

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,

I find that the house in this matter are not premises *primarily* occupied for business purposes, given that the rental unit is at best only occupied by the landlord's business in the amount of 40%. I find the Act applies to this tenancy and I have jurisdiction to determine the matters before this hearing.

The parties gave testimony and were provided the opportunity to make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy started September 2009 and ended July 31, 2013. The rent payable under the tenancy agreement was \$1330.00 per month. The undisputed evidence in this matter is that the tenancy ended in accordance with the provisions of a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated May 31, 2013 for the purpose stated as: *All the conditions for sale . . . the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenant vacated on the effective date of the Notice and was provided the requisite compensation by the landlord under Section 51(1).

The landlord testified that they had a good faith intention to house their mother on the residential property but that ultimately they did not take steps to accomplish the stated purpose for ending the tenancy July 31, 2014. The landlord testified they did some renovations to accomplish their stated purpose for ending the tenancy, but that their mother saw the house after the tenant had already vacated and determined not to move into the house because of her allergy to cigarette smoke. The tenant read out the mother's letter to this matter stating the smell of cigarette smoke in the kitchen and the smoking in the adjacent portion of the house and driveway, along with their sensitivity to smoke and smokers, made her not want to live there anymore and determined to live elsewhere. Soon after, the landlord placed the rental unit for sale.

The tenant also seeks a myriad of accommodation costs for the interim period between their move out date and the date they acquired more permanent accommodations. The tenant testified that had the landlord agreed to extend the Notice to End to include the referenced interim period for which they are claiming, that none of the items before this hearing would have arisen in dispute. The tenant could not further explain why the landlord should be held accountable for accommodation costs after the tenancy ended and having received compensation under the Act.

Analysis

On preponderance of the relevant evidence and relevant testimony for this matter I find as follows.

I find the tenant has not provided sufficient evidence to support their claim for accommodation costs following the end of the tenancy and the legislation does not provide for compensation other than that stipulated by Section 51 of the Act. I find the tenant's portion of their application dealing with "trailer rental, storage of trailer and, R&B Storage" in the sum of \$1850.00 **is dismissed**, without leave to reapply.

The tenant claims compensation under Section 51(2) of the Act which provides as follows:

- 51(2) In addition to the amount payable under subsection (1), if
- 51(2)(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
- 51(2)(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 the evidence in this matter is that the landlord's intention for wanting to end the tenancy may well have been in good faith allowing them to validly issue a 2 Month Notice to End; however, Section 51 of the Act does not concern itself with the good faith intention requirement for issuing the Notice to end in the first place – it only deals with the stated purpose and whether the landlord ended the tenancy in favour of accomplishing that stated purpose. I accept the landlord's evidence and I find the landlord did not ultimately take steps to accomplish the stated purpose within a reasonable period after the effective date of the Notice. As a result, I find the tenant has established an entitlement under Section 51(2) of the Act in the prescribed amount equivalent of double the monthly rent payable under the tenancy agreement of

\$1330.00. Therefore, I grant the tenant double this amount in the aggregate of \$2660.00. As the tenant was successful in their claim they are entitled to recover their filing fee of \$50.00, for a sum award of **\$2710.00**.

Conclusion

I grant the tenant an Order under Section 67 of the Act for the amount of **\$2710.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 28, 2014

Residential Tenancy Branch

