



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing an additional rent increase; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended on the first scheduled day of the hearing, and the matter was adjourned to another date at the request of the landlord, which was not opposed by the tenant. Both parties again attended on the next scheduled date.

The parties and a witness for the tenant each gave affirmed testimony and the parties provided evidentiary material in advance of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established a rent increase that is in addition to the rent increases allowed under the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for additional rent paid and for the landlord's failure to use the rental unit for the purpose contained in a 2 Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant testified that this tenancy began in November, 2010 at which time another person owned the rental property and was the landlord. Rent in the amount of \$1,600.00 per month was payable in advance on the first day of each month. The tenant and the current landlord signed a new tenancy agreement on June 26, 2011 for the same amount of rent in addition to 66% of the utilities for a fixed term to expire on November 1, 2011. The tenancy then reverted to a month-to-month tenancy which ultimately ended on May 15, 2013. The landlord had collected a security deposit from the tenant, and it has been returned to the tenant.

The tenant further testified that the rental unit was the top 2 floors of a house with another suite in the basement, and a coach house on the property was also rented. In December, 2011 a bi-law enforcement officer told the tenant's spouse that the basement suite, also rented to other tenants by the current landlord, was an illegal suite and that the tenants in that unit were required to move out by May, 2012. Thereafter, the landlord's spouse called the tenant and stated that the landlord could not afford to keep the basement suite empty and wanted to include the suite for the tenant for rent in the amount of \$2,200.00 per month and 75% of the utilities. The tenant didn't want the basement suite, but at the end conceded to taking the suite for \$2,000.00 per month and 66% of the utilities. The agreement was verbal and wasn't to take effect until September 1, 2012.

In March, 2013 the tenants were given written notice to end the tenancy for the landlord's use of the property. The notice stated that the landlord or the landlord's family intended to reside in the rental unit. The tenants did not want to move out but felt cornered. The tenants moved out on May 15, 2013. A copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property has been provided for this hearing. It is issued to the tenant and the tenant's spouse, dated March 26, 2013 and contains an effective date of vacancy of June 1, 2013. The reason for issuing the notice is, "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 landlord provided the tenant with the compensation required under the *Act*.

On August 22, 2013 the tenant saw an advertisement on Craigslist advertising all 3 floors of the rental unit for \$2,400.00 per month. A copy of the advertisement showing a date posted of August 15, 2013 has been provided. Also provided is an advertisement from Kijiji for rental of the house at that amount dated August 22, 2013. The tenant

knows the neighbours of that rental unit as well, who have advised that someone other than the landlord has in fact moved in.

The tenant claims \$6,672.90 for: 4 ½ months of additional rent at \$400.00 per month for November 1, 2012 to May 15, 2013; double rent for the landlord's failure to use the rental unit as set out in the notice to end tenancy at \$3,200.00; \$872.90 for moving expenses; and recovery of the \$100.00 filing fee. Proof of payment of the moving expenses has also been provided.

The witness is the spouse of the tenant named in this dispute, and testified that when the tenants moved into the rental unit, a lady and her 2 children resided in the basement suite. They moved out and the landlord bought the building, and then the landlord's daughter moved into the basement suite a month or 2 later.

The landlord called the tenant in September, 2012 about renting the basement suite for additional rental costs, and the tenant paid the additional amount commencing November 1, 2012.

The landlord testified that round the end of September, 2012 his daughter moved into the basement suite, but because the bi-law didn't allow cooking facilities, such as a stove, it couldn't be rented.

The landlord inherited the tenancy agreement with the tenant when the landlord purchased the property, which was set to expire on October 31, 2011. The parties negotiated a new tenancy agreement, a copy of which has been provided for this hearing, and the landlord testified that it should have been extending the tenancy for another year, being November 1, 2012, not 2011 as stated. The copy provided by the landlord states that the tenancy begins on June 26, 2011 and expires November 1, 2011 and becomes month-to-month thereafter.

The landlord agrees that his wife contacted the tenants to see if they would take over the entire home, which was eventually agreed to at \$2,000.00 per month commencing November 1, 2012. The tenant paid the rent with post-dated cheques for the whole year and wanted to extend the tenancy for another year fixed term, but the landlord did not want a fixed term so it remained a month-to-month tenancy.

The landlord intended to renovate his residence, and has provided invoices from companies for services rendered to substantiate that testimony. The services include

drafting and design services dated May 16, 2013; a topographic survey of part of the site and adjacent road dated January 14, 2013; and landscaping services dated January 3, 2013. Also provided is an undated letter from the drafting and design company stating that the company had provided the landlord with drawings, but the build cost exceeded the landlord's budget and the project was terminated. The landlord testified that the renovation basically turned into a tear-down and a new house. It was after the notice to end tenancy was issued that the landlord learned that the new home couldn't be built. The landlords had every intention of moving into the rental unit, and acted in good faith. The landlord referred to the Policy Guideline regarding good faith in issuing a notice to end tenancy. He testified that the tenant was a good tenant, and if the landlord didn't feel that he needed the rental unit for his family, the landlord would not have issued the notice to end tenancy.

Analysis

Firstly, with respect to the tenant's claim that the rental increase was not in accordance with the law, the tenant and the landlord both testified that a negotiation took place for the basement suite to be included and a new rental amount associated with that. The *Residential Tenancy Act* states that a tenancy agreement exists even if it is not in writing by virtue of the payment of rent in exchange for residential premises. The parties are not entirely in agreement as to when the fixed-term tenancy for the top 2 floors of the building expired, and the landlord testified that it was meant to be November 1, 2012 even though it says November 1, 2011. I rely on the evidence, and find that the tenancy became a month-to-month tenancy as set out in writing on November 1, 2011. I further find that on November 1, 2012 the parties entered into another tenancy agreement, albeit orally, wherein the rental unit was now 3 floors, not 2 for the rent of \$2,000.00 per month. Therefore, the tenant's application for a monetary order to recover an additional rent increase is hereby dismissed.

The parties agree that the landlord issued a notice to end tenancy and that the tenants were provided with the compensation required under the *Act* and gave the landlords notice to vacate the rental unit earlier. The issue now is whether or not the landlord has shown a good faith intent to use the rental unit for the purpose set out in the notice. The landlord testified that he did issue the notice in good faith thinking that he was going to move into the rental unit while his new house was being built. He also testified that had he known the project would not go ahead he would have liked the tenants to stay; they were good tenants. The landlord has also provided evidence of the attempt to re-build his house. I have reviewed those documents and the notice to end tenancy, as well as the advertisements posted on Craigslist and Kijiji. The evidence shows that the survey and landscape design services were invoiced in January, 2013 and the notice to end

tenancy was issued on March 26, 2013 with an effective date of vacancy of June 1, 2013. The advertisements were placed in mid-August, 2013. I have no evidence before me to satisfy me when the landlord realized that he did not need to move into the rental unit and whether or not the tenant was offered the option of staying. Also, the advertisements were placed for a monthly rental of \$2,400.00 which is more than the landlord's wife had originally asked the tenants for when offering the basement suite and more than the tenants had negotiated with the landlord. If the landlord had advertised the rental unit for the amount that the tenants were offered originally, or for the amount the parties eventually agreed to, I would find more credence in the landlord's testimony. I find that the landlord did not exercise a good faith intent in issuing the notice to end tenancy. Therefore, I find that the tenant has established a monetary claim as against the landlord for double the monthly rent, or \$4,000.00.

The parties also agree that the landlord provided the tenants with the compensation required under Section 51 of the *Residential Tenancy Act*, and I find that moving expenses are contemplated by the legislation, and I dismiss the tenant's application in that regard.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,100.00.

This order is final and binding on the parties and may be enforced.

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: March 05, 2014

Residential Tenancy Branch

