



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to sections 51(2) and 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant testified that he received the landlord's March 28, 2013, 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice), which the landlord believed he likely placed in the tenant's mailbox that day. The landlord confirmed that he received a copy of the tenant's dispute resolution package sent by the tenant by registered mail on December 4, 2013. I am satisfied the above documents were served to one another in accordance with the *Act*. As the landlord testified that he received a copy of the tenant's 37 pages of written evidence, I have also considered the tenant's written evidence in reaching my decision.

While the landlord testified that he sent the tenant a copy of his one page of written evidence by regular mail, he did not know when that occurred and had no witness available to attest to his placement of this document in the mail. The tenant testified that he never received this document. Since the tenant had not received this document and it was relatively short, I allowed the landlord to read this document into his sworn testimony so that the tenant had an understanding of the landlord's explanation for why his daughter did not move into the rental unit as originally planned. I have considered the landlord's sworn testimony including all of the material included in the landlord's one page of written evidence.

Issues(s) to be Decided

Is the tenant entitled to a monetary Order in an amount equivalent to double his monthly rent for the landlord's failure to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy for a two bedroom main floor rental suite in the landlord's home began as a one-year fixed term tenancy on April 1, 2012. The landlord continues to live in the basement level of this property. At the end of the fixed term, the tenancy continued as a periodic tenancy. Monthly rent was set at \$1,250.00, payable in advance on the first of each month. The parties agreed that the landlord has returned the tenant's \$600.00 security deposit paid on or about April 1, 2012.

The landlord's 2 Month Notice, entered into written evidence identified the following reason for seeking an end to this tenancy:

- *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 2 Month Notice required the tenant to vacate the rental unit by June 1, 2013, on the basis of the landlord's plan to move his daughter and possibly some of her four children into the rental unit. The parties agreed that the landlord allowed the tenant to forego his payment of rent for May 2013, the last month of his tenancy, in accordance with section 51(1) of the *Act*.

The tenant applied for a monetary award of \$2,500.00, plus a recovery of his filing fee, on November 29, 2013, almost six months after he vacated the rental unit on May 31, 2013. The tenant gave undisputed evidence that the landlord's daughter never did move into the rental unit. Instead, the tenant gave undisputed sworn testimony and written evidence that an unrelated woman, NDJ, who had been a previous tenant in this rental unit moved into the rental unit on June 1, 2013. The tenant submitted written evidence from his former roommate (and female friend) stating that she was approached by the landlord prior to the landlord's issuance of the 2 Month Notice asking him if she were interested in returning to live in the rental unit with roommates of her choosing. The tenant maintained that the landlord did not act in good faith in ending his tenancy for landlord's use of the property as he was actively seeking replacement tenants for him before and after he issued the 2 Month Notice. He claimed that the 2 Month Notice was issued as a way of ending his tenancy due to concerns the tenant had been raising about the rental unit and the landlord's ability and willingness to attend to his responsibilities as landlord. The tenant provided copies of considerable correspondence between the parties, which confirmed that the parties were in dispute about many topics of dispute immediately prior to the issuance of the 2 Month Notice.

In the written statement he read into sworn testimony, the landlord maintained that he issued the 2 Month Notice to enable his daughter who was involved in a difficult marital separation from her husband to have a place to live either by herself or with her four children. At the hearing, he described the circumstances of his daughter during the period from March 2013 until June 2013, as being a "very fluid situation." His daughter gave sworn testimony at the hearing that she did intend to move into the rental unit if her ex-husband had not been able to secure alternate employment to support her and their children and if he had not finally signed their separation agreement.

At the hearing, the landlord confirmed the tenant's claim that the landlord approached the tenant's former roommate and female friend to rent the premises as of June 1, 2013. The landlord had no recollection of having asked her to also locate other roommates at that time. He said that his intention was to have his daughter share the space on the main floor with a non-family member tenant who would continue to pay some rent.

The landlord gave sworn oral testimony that he first contacted NDJ, the tenant who took occupancy of the rental unit on June 1, 2013, after he issued the 2 Month Notice on March 28, 2013. However, the tenant correctly noted at the hearing that the tenant had provided written evidence in the form of the landlord's own March 17, 2013 letter to the tenant's former roommate and female friend to contradict the landlord's sworn testimony on this point. This March 17, 2013 letter stated that NDJ was going to be returning to live in the rental unit with his daughter and two of her children on June 1, 2013.

At the hearing, the landlord confirmed that NDJ moved into the rental unit on June 1, 2013, at his invitation. He said that NDJ now has two other female roommates, neither of whom are related to the landlord. He testified that he is now receiving \$1,400.00 in monthly rent for the rental suite formerly occupied by the tenant. In his written statement and in their sworn testimony, the landlord and his daughter maintained that it was unnecessary for the daughter and her children to move into the rental unit once the daughter's ex-husband found work and signed their separation agreement. In his written statement, read into sworn testimony, the landlord stated "Unfortunately I seemed to have violated a bylaw."

Analysis

I first note that it is section 51 (2) of the *Act* and not a "bylaw" that provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* 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, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Section 49 (3) of the *Act* provides that: "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord ***intends in good faith*** to occupy the rental unit." (emphasis added)

The Residential Tenancy Branch's (the RTB's) Policy Guideline 2 establishes the considerations to be taken into account when considering the Good Faith Requirement in Ending a Tenancy. It reads in part as follows:

...If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy...

In this case, I find that there is undisputed written evidence and sworn testimony that no member of the landlord's family moved into the rental unit, the stated reason for the landlord's issuance of the 2 Month Notice. I accept that the landlord and his daughter were confronted with what the landlord described as "a very fluid situation" with respect to her finances and her ability to remain in her existing accommodations. However, I find that the landlord's own written evidence and sworn testimony confirms that the landlord was actively attempting to find tenants for this two bedroom rental unit even before the landlord issued the 2 Month Notice. The landlord has also entered written evidence that he seemed to have violated what he described as a bylaw.

Given the evidence before me, I do not accept the landlord's claim that he was acting in good faith to move his daughter, her four children and a former tenant into the same two bedroom rental unit. While it is possible that some of the children may have been able to stay in the basement suite with the landlord, I find it more likely than not that the landlord's efforts were more directed at finding an alternative set of unrelated tenants to take possession of the rental unit in place of the tenant with whom he was having repeated disagreements. The tenant correctly observed that if the landlord's daughter and children truly only needed one bedroom of the two bedroom rental unit and that the rental unit could accommodate another unrelated tenant, then the male tenant could have been given the option to remain in the rental unit. Rather, I find that the landlord's actions in contacting both the tenant's former roommate and a former tenant in this rental unit before the 2 Month Notice was issued reveals that the landlord was actually attempting to find a new tenant or tenants to take possession of the main floor of this rental unit as a means of resolving ongoing disputes the tenant and the landlord were encountering. I also find the landlord acted in bad faith in issuing the 2 Month Notice when I consider that NDJ moved into the rental unit the day after the tenant vacated the rental unit and is now paying an additional \$150.00 in monthly rent for this rental unit with the additional two roommates she has located. I find it unlikely that the landlord was acting in good faith in claiming that his attempt to find an unrelated tenant to take occupancy on June 1, 2013, was limited to one of the bedrooms in this rental unit, to share living space with his daughter and her four children. This seems extremely unlikely to me, given that the landlord's daughter also noted that she eventually decided against her father's plan as it would mean relocating to another community with a month left in her children's school year.

I find that the landlord has failed to meet the burden placed on him of demonstrating that he truly intended to what he said he was going to do when he issued the 2 Month Notice. As such, I allow the tenant's application and award him a monetary Order in the amount of \$2,500.00 pursuant to section 51(2) of the *Act*.

As the tenant has been successful in this application, I allow the tenant to recover his \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$2,550.00 in accordance with section 51(2) of the *Act* and to recover the tenant's filing fee. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 26, 2014

Residential Tenancy Branch

