



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was scheduled to deal with a tenant's application for monetary compensation equivalent to two month's rent, under section 51 of the Act. At the originally scheduled hearing an agent appeared for the landlord and requested an adjournment on the basis the landlord was out of the country. The tenant objected to the request for adjournment. The adjournment was granted; however, the landlord was ordered to provide proof of being out of the country, such as plane tickets or a travel itinerary, prior to the commencement of the reconvened hearing.

At the reconvened hearing, both parties appeared. I noted that I had not received copies of plane tickets or a travel itinerary as ordered. The landlord's agent indicated that he had such documents in front of him and he was willing to fax those to me during the hearing. I ordered the landlord to fax me the travel documents; however, the agent then claimed they were having difficulty with sending a fax.

The landlord also testified that he "did not receive anything from the tenant" with respect to the tenant's Application for Dispute Resolution. When I asked the landlord how he knew to call or send an agent to the original hearing of March 25, 2014 the landlord stated he received a Notice of Hearing from the Branch. I explained to the landlord that the Notice of Hearing is a document that is part of the hearing package that the tenant must serve upon the landlord. The landlord then changed his testimony to acknowledge receiving the tenant's Application for Dispute Resolution as well. Having been satisfied the landlord has been duly notified of the claims against him and I proceeded to hear this case.

Both parties appeared 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

Is the tenant entitled to compensation equivalent to two month's rent as provided under section 51 of the Act?

Background and Evidence

The tenancy started in 2008 with the former landlord. The current landlord acquired the property in 2011. The tenant was required to pay the landlord rent of \$674.00 on the 1st day of every month. On July 15, 2013 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property to the tenant with a stated effective date of September 30, 2013 (the 2 Month Notice). The reason for ending the tenancy, as indicated on the 2 Month 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 tenant did not pay rent for the month of September 2013 as compensation for receiving the Notice and the tenant vacated the rental unit September 30, 2013 pursuant to the Notice.

The tenant submitted that he was informed by the landlord that the landlord's son would be moving in to the rental unit; however, approximately two weeks after his tenancy ended he observed other people moving in to the unit. The tenant spoke with the couple he saw moving in and the couple confirmed that they were the new tenants of the rental unit.

The landlord testified that his son and son's spouse intended to move into the rental unit but the landlord's son found the rental unit too dirty upon viewing it shortly after the tenant moved out and the landlord's son decided not to move in. The landlord did not explain why the unit was not cleaned so as to accommodate his son. Rather, the landlord explained how he proceeded to advertise the rental unit for rent and he confirmed that new tenants moved in on October 10, 2013. The landlord also testified that the tenants who moved in on October 10, 2013 moved out 1.5 months later. The landlord claimed that the rental unit sits vacant as the city has advised the landlord that the rental unit is illegal.

The landlord objected to the tenant's request for further compensation because the tenant had already been given one month of free rent for the month of September 2013 and there were problems with the tenant leading up to the issuance of the 2 Month Notice, such as: (1) the upper floor of the residential property is also tenanted and there were issues between the upper floor tenants and the tenant concerning shared access

to the laundry machines; and, (2) the tenant also objected to a 10% rent increase sought by the landlord.

The tenant also pointed to his objection to a large rent increase as the landlord's motive to serve him with the 2 Month Notice.

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. First of which is compensation for receiving the 2 Month Notice provided under section 51(1) and this compensation is equivalent to one month's rent. Secondly, compensation may be payable to the tenant under section 51(2), in addition to compensation payable under section 51(1), where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice. Compensation under section 51(2) is intended to dissuade landlords from issuing a 2 Month Notice to end a tenancy for a reason not permitted under the Act or in bad faith.

In this case, I am satisfied the tenant has been provided compensation under section 51(1) of the Act. The issue to determine is whether the tenant is 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 ...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[my emphasis added]

Since the rental unit was not occupied by the landlord or the landlord's close family member but was re-rented to new tenants after the tenancy ended, I find the landlord did not use the rental unit for the purpose stated on the 2 Month Notice given to the tenant.

I found the landlord's failure to produce the travel documentation I had ordered on two occasions and his changing position with respect to receiving the tenant's hearing package to adversely affect the landlord's credibility. Thus, in the absence of any evidence to corroborate his position that the new tenants moved out and the unit has been vacant since November 2013, I rejected the landlord's submission that the unit is vacant and a basis to deny the tenant's claim.

In light of the above, I accept the tenant's position that the landlord did not use the rental unit for the purpose stated on the 2 Month Notice and his request for compensation of \$1,348.00 is granted. I further award the tenant recovery of the \$50.00 filing fee he paid for this application.

Provided to the tenant is a Monetary Order in the total amount of \$1,398.00 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 tenant was successful in his application and has been provided a Monetary Order in the sum of \$1,398.00 to serve 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: June 03, 2014

Residential Tenancy Branch

