



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Lepage Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

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 59(2) and 67 of the *Act*. 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 Respondent's agent (the agent) confirmed that he received copies of the tenant's dispute resolution hearing package sent by the tenant by registered mail on May 1, 2014. He also confirmed that he received the tenant's written evidence package, the only written evidence submitted by either party. I am satisfied that the tenant served the Respondent with the above documents in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to accomplish the stated purpose for ending her tenancy under section 49 within a reasonable period after the effective date of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the 2 Month Notice) or to use the rental unit for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the 2 Month Notice?

Background and Evidence

This tenancy was for the rear house on a property containing two houses. During this tenancy, the property was owned by the couple who lived in the house on the front of this property. This tenancy began on June 1, 2012 as a one-year fixed term tenancy. Once the initial term expired the tenancy continued as a periodic tenancy until the tenant vacated the rental unit on or about October 4, 2013. According to the terms of the Residential Tenancy Agreement (the Agreement), monthly rent was set at \$1,200.00, payable in advance on the first of each month. Although the tenant paid the Respondent a \$600.00 security deposit on August 1, 2012, the agent has returned all of that deposit to the tenant.

The parties agreed that the agent handed the tenant the 2 Month Notice on August 30, 2013. The effective date of this Notice was October 31, 2013. The landlord's 2 Month Notice, entered into written evidence by the tenant, 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 agent confirmed that he received the tenant's September 6, 2013 written notice that the tenant intended to vacate the premises by October 2, 2013. The parties agreed that they agreed to a mutual extension of the tenancy until October 4, 2013, when the tenant surrendered vacant possession of the rental unit to the landlord.

The parties agreed that the agent refunded the tenant's September 2013 rent payment of \$1,200.00 to meet the requirements of sections 51(1) and (1.2) of the *Act* regarding compensation due a tenant who receives a 2 Month Notice under section 49 of the *Act*. The parties also agreed that the extension of the tenancy for the first four days of October 2013 was made without any requirement of rent during that period.

The tenant's application for a monetary award of \$2,400.00 resulted from the tenant's assertion that the landlord did not use the premises for the reason cited on the 2 Month Notice. The tenant entered written evidence that the rental unit was advertised for rent shortly after this tenancy ended. At the hearing, the tenant testified that she spoke to the elderly man who was supposed to have been moving into the tenant's home after the tenant received the 2 Month Notice. This man, an octogenarian, was the female owner's father. Although the ownership history is somewhat unclear, it appears that this man had been one of the owners of this property at one time and considered the property to be owned by "the family". The tenant gave undisputed sworn testimony that the elderly man told her that he was confused about the 2 Month Notice. She said that he told her that he was living in another community where he was receiving medical treatment and did not plan to move to the tenant's house. The tenant testified that she did not believe that the owner's father ever moved to the rental unit as the property was listed for sale after she vacated the premises and the availability of her rental home was listed for rent.

The agent testified that the owners of this property terminated the agency relationship with the agent's company by the end of October 2013. He did confirm that the couple who then owned this property did contact the agent's company in September 2013, before this tenancy ended, to have their home at the front of the property rented. The agent testified that a clerical error was made by one of the Respondent's staff in

including a photograph of the tenant's home in the rental listing instead of the photograph of the home at the front of this property. He gave undisputed testimony that the Respondent attempted to rent the home at the front of this property and not the tenant's home at the rear of the property.

The agent also testified that on October 5, 2013, the day after the tenant vacated the rental unit, the couple who then owned the property listed the entire property for sale through the agent's company. He said that the property had been advertised for sale a number of times during the course of this tenancy and over the years as the *de facto* owners, including the female owner's father, were in their late eighties. He said the listing with his company lasted from October 5, 2013 until December 10, 2013. Subsequent to that listing, the owners listed the property with another real estate firm. That firm was able to sell the property in the spring of 2014. He testified that new owners took possession of the property on June 30, 2014.

The agent testified that when the owners of the property contacted him to request the issuance of the 2 Month Notice he advised both the couple and the female owner's father of the possible implications of issuing a 2 Month Notice. He testified that he fully informed the owners and the female owner's father that they risked the imposition of a monetary award against them if they did not abide by the terms of the 2 Month Notice that they were asking that he issue to the tenant. The agent testified that his company was no longer involved in the couple's rental activities once they discontinued their contract with him to manage their property as their agent. The agent testified that he had little knowledge as to whether or not the owners fulfilled their stated intention to have the female owner's father reside in the home vacated by the tenant.

Analysis

Section 1 of the *Act* defines a landlord in the following terms:

"landlord", in relation to a rental unit, includes any of the following:

(a) *the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*

(i) *permits occupation of the rental unit under a tenancy agreement, or*

(ii) *exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

The tenant named only the agent's company as the Respondent in her application. At the hearing, the agent confirmed that his company was identified as the landlord on the Agreement and on the 2 Month Notice issued to the tenant. At the time that this tenancy existed, I find that the Respondent was the owner's agent. As such, the tenant is allowed to name the company then managing the owners' rental property as the Respondent in this application. Whether or not the then property owner ended the agency relationship with the Respondent subsequent to this tenancy does not affect the tenant's ability to identify the Respondent in her application. Similarly, the sale of the property to another party as of June 30, 2014, has no impact on the tenant's application for a tenancy that ended on October 4, 2013.

Section 51(2) of the Act reads in part as follows:

51 (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.

The tenant is not responsible for the end of the agency relationship between the Respondent and the former owners of this property. She identified the company named as the landlord in her Agreement and the issuer of the 2 Month Notice as the Respondent to her application. As the issuer of the 2 Month Notice and the Respondent

named in the tenant's application, it is the Respondent's task to provide evidence to dispute the tenant's application if the Respondent disagrees with her claim.

In this case, I find that the agent provided an adequate explanation as to why the tenant's house at the rear of this property was mistakenly shown as the rental house for rent in the advertisement for the availability of the home at the front of the property for rent. However, I also find that the sequence of events as described by the agent confirms the tenant's assertion that her former rental home was not used for the purpose stated in the 2 Month Notice. The couple who were listed as the owners on the deed to this property entered into an agreement with the Respondent to advertise the availability of their home at the front of this property for rent even before this tenancy ended. Given the age of the female tenant's father, the tenant's undisputed testimony regarding his health conditions and need to remain in his community for treatment and the sequence of events, I find it very unlikely that the couple who then owned the property intended in good faith to move the female owner's father into the home at the rear of this property. Further evidence of this absence of good faith in the issuance of the 2 Month Notice is apparent when the then owners listed this property for sale on the day after this tenancy ended. The former owner's subsequent sale of the property further reinforces the tenant's claim that there was little intention to adhere to the reasons cited in the 2 Month Notice. At any rate, there is no evidence before me to even suggest that the former owner's father lived in the tenant's former rental home for a period of at least six months as is required by section 51(2)(b) of the *Act*.

In this case and based on a balance of probabilities, I find that the tenant has demonstrated to the extent required that she is entitled to a monetary Order of double her monthly rent pursuant to section 51(2) of the *Act* because the landlord has not used the rental unit for the stated purpose in the 2 Month Notice. Rather than demonstrate evidence to successfully dispute this claim, much of the agent's evidence appeared to confirm the tenant's claim that attempts were made to sell this property as soon as this tenancy ended.

For the reasons outlined above, I find that the tenant is entitled to compensation as set out in section 51(2) of the *Act*. I therefore find that the tenant is entitled to the recovery of the equivalent of two month's rent. As the normal monthly rent was set at \$1,200.00, I find that the tenant is entitled to a monetary Order in the sum of \$2,400.00, as claimed.

During the course of this hearing, it became apparent that the Respondent was hampered by the termination of the agency relationship between the Respondent and their clients, the former owners. I understand the difficulty presented to the Respondent in attempting to dispute a claim where the agency relationship between the Respondent

and their former clients was severed shortly after this tenancy ended. In this regard, the agent did not dispute the tenant's claim that the former owners were responsible for the failure to abide by the reasons identified in the 2 Month Notice issued on their behalf. While sympathetic to the difficult position of the Respondent in this situation, whatever remedy the Respondent may have with the former owner is between those parties and has no impact on the tenant's ability to claim against the party who signed her Agreement and issued her the 2 Month Notice that ended her tenancy.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$2,400.00 pursuant to sections 59(2) and 67 of the *Act*. The tenant is provided with these Orders in the above terms and the Respondent must be served with this Order as soon as possible. Should the Respondent 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: August 29, 2014

Residential Tenancy Branch

