



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

The tenant applies for a monetary order for the equivalent of one month's rent due under s.51 of the *Residential Tenancy Act* (the "Act") when a landlord serves a tenant with a two month Notice to End Tenancy

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to the award requested?

Background and Evidence

The rental unit is a one bedroom apartment in a 185 unit apartment building.

The tenant had been living in suite #1009 since October 1, 2014. In April 2015 he moved to and now lives in suite #2008. He rent has continued at \$1400.00 per month. The landlord holds a \$700.00 security deposit.

Prior to October 2014 the tenant had lived in a third suite in the building. The landlord had been conducting on going renovations in the suites of the building. At that time it relocated the tenant to suite #1009, paid him a "moving allowance" and also paid him the equivalent of one month's rent.

In early 2015 it proposed to renovate suite #1009. It wrote to the tenant on February 25, 2015 stating:

We are continuing with the upgrading of the suites, common areas and plumbing at [apartment name redacted]. The plumbing upgrading in your unit will require the suite to be vacant for a period of time.

At this time we would like to offer you the option of moving to a completely renovated 1 bedroom unit on floors 16-20. We will give you a relocation allowance of \$500.00 to assist with the move. In addition, your rent will remain the same as you are paying now instead of the market rent on the higher floor.

Should you wish to accept the offer, please notify the Resident Manager no later than Thursday, February 26, 2015. You will have the option to move any time before April 30, 2015.

If you do not accept the offer to move to a higher floor, we will serve you with a "Notice to Vacate" for regarding your suite. Therefore, you will be required to move out of your suite by April 30, 2015. We sincerely hope that you will consider remaining in the building on a higher floor. Once your suite has been completed, you will have the option to move back to your original suite if you wish.

Accompanying the letter was a 2 Month Notice to End Tenancy for Landlord's Use of Property, in the government form, indicating an effective date to end the tenancy April 30, 2015.

By a handwritten letter dated March 10, 2015, the tenant wrote to the landlord's representative indicating that he had accepted the option to move to a completely renovated suite in the building but noting that there had been no mention of the compensation for tenants which had been outline in the Notice to End Tenancy attached to the landlord's original letter. He noted that it had been paid with his earlier move.

The landlord responded by letter dated March 23rd says that the one month's rent is for those tenants who choose to move out of the building. The letter notes that the tenant will be paying \$1400.00 per month for his new suite, though the market rent is \$1600.00. The letter states that if the tenant wishes to receive the one month's compensation then he'll have to pay the \$1600.00 per month rent for his new suite, "[y]ou can chose which package you wish."

The tenant stated at hearing that the one month's compensation was not just for those moving out of the building. He did not elaborate on this statement nor provide evidence to indicate that other tenants who had recently chosen to be relocated in the same building were receiving the one month's compensation.

The tenant signed a new tenancy agreement with the landlord and moved into his new suite on April 1, 2015. He brought this application on April 7th.

Analysis

Section 47(6)(b) of the *Act* provides:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

As previously noted, the form the landlord gave with its letter of February 25th was in the form required by s.52 of the *Act*.

Section 51 of the *Act* provides, in part:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

In my view, the landlord's letter of February 25 is clear; the tenant may temporarily relocate to a more valuable suite in the same building and receive a \$500.00 moving allowance or the tenant will be served with a "Notice to Vacate" form and the tenancy will end effective April 30, 2015.

This was a procedure the landlord was entitled to take. Indeed, relocating a tenant during renovations or upgrading of a tenant's rental unit is a method more desirable from a tenant's point of view, than having the tenancy terminate, resulting in the tenant having to find new accommodation.

The tenant had an option and he clearly chose the first option: temporary relocation.

He is not entitled to the compensation awardable on a tenancy being terminated as a result of a two month Notice to End Tenancy.

Conclusion

The application must be dismissed.

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: September 13, 2015

Residential Tenancy Branch

