



Dispute Resolution Services

Page: 1

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

This hearing dealt with a tenant's application for monetary compensation from the landlord for receiving a *2 Month notice to End Tenancy for Landlord's Use of Property*. Both parties appeared or were represented at the hearing and 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 one month's rent for receiving a *2 Month Notice to End tenancy for Landlord's Use of Property*, as claimed?

Background and Evidence

A tenancy for the subject rental unit commenced July 1, 2014 and the tenant was required to pay rent of \$1,450.00 per month. On February 26, 2015 the tenant was served with two documents by the landlord's agent: a letter and a *2 Month Notice to End Tenancy for Landlord's Use of Property*. The letter indicated the tenant's rental unit, and other units located on certain floors of the building, were scheduled for renovation. The letter contained an offer to relocate the tenant to another rental unit in the building, with compensation to the tenant, and indicated that if the tenant did not accept the offer the tenancy would end pursuant to the 2 Month Notice.

It was undisputed that on February 27, 2015 the tenant viewed two available units with the landlord and the tenant accepted the landlord's offer to relocate him to the rental unit he chose. The unit chosen by the tenant was reserved for him so that he could relocate to that unit as of May 1, 2015. The relocation package included: moving to a renovated unit on a higher floor for the below market rent that so that the tenant's rent would remain at \$1,450.00 per month; a \$500.00 moving allowance; and, the option to return to the former rental unit after renovations were completed.

The landlord submitted that the market rent for the unit the tenant chose is \$1,650.00 per month meaning the tenant benefits from below-market rent of \$225.00 per month. The tenant did not dispute the landlord's figures. The tenant also confirmed that he received the \$500.00 moving allowance and that he did not seek to return to his former unit.

In questioning the tenant's claims against the landlord, the tenant submitted that he is actually seeking compensation due to the inconvenience, disturbances and loss of common facilities that he has experienced by the landlord's on-going renovation project at the residential property. The landlord acknowledged that significant renovations have been underway at this property; however, I noted that the tenant had not filed a monetary claim for losses associated to renovations at the residential property. Rather, the tenant's monetary claim specifically referred the receipt of the 2 Month Notice. I informed the parties that I cannot consider claims that are not identified in the application as to do so would be prejudicial to the other party and violate the principles of natural justice. The tenant was informed that he remains at liberty to file another application should he wish to pursue compensation for these losses.

Analysis

In filing this Application, the tenant indicated he was seeking compensation for receiving a Notice to End Tenancy under section 49 of the Act. A Notice to End Tenancy under section 49 is a *2 Month Notice to End Tenancy for Landlord's Use of Property*. Tenants in receipt of such a Notice are required to vacate the rental unit and are compensated the equivalent of one month of rent. Landlords issuing a 2 Month Notice are not obligated to offer or find alternative accommodation for the tenant.

In this case, the tenant received a 2 Month notice to End Tenancy; however, it was accompanied by a letter. Given that these documents were served together, I find it appropriate to consider both documents in determining how the subject tenancy ended. I find the wording of the letter is sufficiently clear in conveying to the tenant that the Notice to End Tenancy was being served in the event the tenant does not accept the landlord's offer to relocate to another unit. I also consider the tenant's actions after receiving the letter and Notice to Vacate which included viewing the units being offered to him, selecting a unit, and signing the letter with a statement that he was signing it "for acceptance of switch to [unit number of unit chosen by tenant]". I find that all of these factors point to the tenancy ending pursuant to a mutual agreement.

I further find that in reaching a mutual agreement, the tenant benefited more so than he would have had the tenancy ended pursuant to the 2 Month Notice to End Tenancy. I reach this conclusion by considering the tenant received \$500.00 plus below market rent of \$225.00 per month, in perpetuity. The potential for greater compensation for the tenant, and the option to move back to the rental unit after renovations were complete, satisfies me that the landlord was not attempting to avoid compensation payable where a tenancy ends pursuant to a 2 Month Notice to End Tenancy.

In light of all of the above, I find the tenant is not entitled to further compensation from the landlord for receiving the *2 Month Notice to End Tenancy for Landlord's Use of Property* and I dismiss his application.

As stated previously, I have not considered the tenant's assertions that he has suffered losses with respect to renovation activity at the residential property as such claims were not identified as being part of this application. The tenant retains the right to pursue such claims if he so chooses.

Conclusion

The tenant's application has been 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: November 03, 2015

Residential Tenancy Branch

