



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The tenant also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

The tenant advised that a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property (the notice) was provided to the Residential Tenancy Branch with the Tenant's Application for Dispute Resolution, and that a copy was provided to the landlord in the evidence package, but no copy of it is contained in the case file. The parties and the witness gave testimony about the notice, which is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this 6-month fixed term tenancy began on November 1, 2014 and then reverted to a month-to-month tenancy, which ultimately ended on August 2 or 3, 2015. Rent in the amount of \$1,100.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 as well as a pet damage deposit in the amount of \$550.00. The parties mutually agreed to the amount of the deposits that was returned to the tenant, and there are no issues outstanding with respect to either deposit.

The landlord's spouse personally served the tenant's fiancé, who also resided in the rental unit, with a 2 Month Notice to End Tenancy for Landlord's Use of Property on May 31, 2015. The tenant testified that the notice was dated May 31, 2015 and contained an effective date of vacancy of July 31, 2015. The reason for issuing the notice is that the rental unit would be occupied by the landlord or a close family member of the landlord.

The tenant further testified that the rental unit is not and has not been occupied by the landlord or close family members. The tenant lives in the neighbourhood, about a 10 minute drive away, and believes that the home is presently vacant because there is no activity. Also, the tenant has several friends in the area that the tenant visits. Soon after the tenant vacated, the landlord's family was at the rental unit on weekends every couple of weeks doing yard work and maintenance, and continues to do so. Also, the same day, or perhaps the next day after the tenant moved out the tenant observed a boat, a jet-ski and a quad on the property that do not belong to the landlord. A friend of the tenant, who is a neighbour, advised the tenant that on September 4, 2015 that there were tenants on the property who were evicted at 5:40 p.m. that day.

Prior to vacating, the tenant was also told by neighbours that people staying in a campground were waiting for the tenancy to end so they could move in, and the people were pointed out to the tenant as they drove by the rental unit.

The tenant further testified that the photographs provided by the landlord show the landlord and his spouse doing yard work, which they did sometimes on weekends. They may have stayed a night or 2 in the rental unit but usually at the in-laws' home.

The tenant's witness testified that she is the fiancée of the tenant and resided at the rental unit with the tenant.

The landlord's wife personally gave the witness a 2 Month Notice to End Tenancy for Landlord's Use of Property and told the witness that she and her husband and family were moving in. The tenant asked questions, but the landlord's wife was nervous and said she didn't have to provide an explanation, and said, "We want our property back."

However, the witness saw another family move into the rental unit after this tenancy had ended. The witness saw all their belongings being moved in and saw a woman caring for her children outside. The witness works in the area. The witness also saw the family move out.

The landlord testified that the reason the tenant was given the notice was because the yard was abit messy, not to the landlord's liking with cigarette butts, oil stains and beer cans in the yard. The tenant and fiancé were nice folks and the landlord didn't want to over-see or judge them, so decided to end the tenancy and gave notice to occupy the rental unit themselves.

Over the summer, friends of friends were spending a lot of time in the beach area and were looking for a home in the City and one became vacant in August. At the end of July, the landlord agreed to have them as house guests, and they own the boat. The guests had been camping while waiting for a house and the landlord's wife felt sorry for them. They had 3 kids, and the landlord agreed that they could stay for a week. However, because their house didn't come available, they stayed for close to a month. Their storage rental had expired, so the landlord allowed them to move belongings onto the property, and they agreed to stay only until the end of August. Their place became available 1 or 2 days into September and they packed up and left.

The landlord has been doing maintenance and spending some weekends at the rental unit which was the full intent of re-occupying it. It's a vacation or recreation property when weather allows. The landlord does not believe the notice was understood by the tenant correctly; the landlord was perfectly within his rights to use the property as he saw fit. The landlord and his family reside in another City about 35 minutes away from the rental unit.

The landlord denies that any other tenants moved into the rental unit or that tenants have been evicted. The rental unit is not currently rented and the landlord has not collected rent from anyone.

The landlord further testified that his wife gave a 2 Month Notice to End Tenancy for Landlord's Use of Property to the tenant's fiancé on May 31, 2015. The reason for issuing the notice states that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

Analysis

The *Residential Tenancy Act*, sub-section 49 (3) states as follows:

(3) 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.

The *Act* also states:

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.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

In this case, the tenant withheld rent for the month of July, 2015, pursuant to subsection 51 (1). The tenant's application before me is with respect to subsection 51 (2) (b).

The landlord testified that he does not reside in the community, nor does his family, but that the rental unit is occupied by the landlord and the landlord's family on weekends as vacation or recreational property. The landlord also testified that the real reason was that the tenant didn't maintain the yard to his liking.

The *Act* contemplates that the parties have a contract, and sets out in what situations a landlord may end a tenancy. It is not sufficient for a landlord to end a tenancy for landlord's use of property for weekends. In order for the landlord to end a tenancy to occupy the rental unit, the landlord or a close family member must have good faith intent to live in it. In this case, the landlord had no intention of living in the rental unit and no intention of having a close family member reside in it, and I find that the tenant is entitled to compensation as set out in subsection 51 (2) above.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,250.00.

This order is final and binding and may be enforced.

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: December 08, 2015

Residential Tenancy Branch

