



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on September 17, 2016 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement, and to recover the filing fee from the Landlords.

The Landlord appeared for the hearing along with the Tenant who had a translator. The Translator translated the Tenant’s testimony. Both parties provided affirmed testimony during the hearing. The Tenant provided the notice to end tenancy and one page of documentary evidence prior to the hearing. The Landlord confirmed at the start of the hearing that he was by himself. The Landlord confirmed that he had personally received the Tenant’s Application, the Notice of Hearing documents, and the Tenant’s evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have carefully considered the evidence provided by the parties in this case as follows.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation payable under Section 51(2) of the Act?

Background and Evidence

The Tenant testified this tenancy started approximately two years ago on a month to month basis. The Landlord testified that he had bought the property where the rental

unit was located and took over the tenancy. The parties agreed that rent for the two bedroom suite the Tenant was renting was \$850.00 payable on the first day of each month. The parties confirmed that the rental property consisted of two ground level suites; one being a two bedroom unit which the Tenant rented and the other being a three bedroom suite which was rented by the Landlord to other renters.

The Tenant testified that the Landlord ended the tenancy by serving him with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on May 1, 2015. The Notice shows a vacancy date of July 1, 2015 and the reasons indicated for ending the tenancy were: "*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*" and "*The Landlord has all the necessary permits and approvals required by law to covert the rental unit to a non-residential use.*"

The Tenant testified that he accepted the Notice and moved out of the rental unit pursuant to the vacancy date of the Notice, being July 1, 2015. However, after two months, the Tenant saw an advertisement for the re-rental of the unit. The Tenant provided this into evidence and the advertisement is titled "\$1100 / 2br – Ground level Suite for rent in [city name]". The advertisement is dated September 15, 2015 and contains the name of the Landlord and the contact phone number as it appears on the Tenant's Application. The details of the advertisement show that it is for a ground level suite, 2 bedrooms, 1 washroom, living room and kitchen with separate entry and is available straight away. The Tenant submitted that the Landlord failed to use the rental unit for the intended use on the Notice and now seeks to recover the compensation payable to him under the Act for this reason.

The Landlord started his testimony stating that he had given two months free rent already to the Tenant. The Tenant disputed this and stated that he had withheld his rent for the last month of the tenancy (June 2015) pursuant to his right to do so under the compensation provisions of the Notice. The Landlord submitted that the Tenant had withheld his rent for June and July 2015. When the Landlord was asked why the Tenant would have withheld rent for July 2015 when the tenancy was ended on July 1, 2015 through the Notice, the Landlord became confused and stated that his wife had all the paperwork and because it was such a long time ago he could not remember.

In response to the advertisement presented by the Tenant, the Landlord testified that the advertisement was for the other rental unit and not for the one that the Tenant rented. The Landlord testified that the rental unit was used by his parents who had arrived from overseas for a period of seven months and now it is vacant. While the Landlord was presenting this evidence, I could hear another party in the background

speaking to the Landlord in a different language at two different points. The Landlord was asked why he had not announced the other party into the hearing. The Landlord stated that this other party had just entered into the room. The Landlord put that other party onto the line to explain the circumstances. This other party explained that when the Tenant had moved out of the rental unit, the Landlord's parents moved into the rental unit.

When the Landlord was asked why then did he place an advertisement for the rental unit two months after the Tenant's tenancy had been ended with the Notice. The Landlord's party explained that the renters in the three bedroom suite next door to the rental unit had vacated that suite and the Landlord had moved into that unit himself occupying one of the three bedrooms as well as using a washroom; this therefore left two bedrooms which the Landlord then advertised for re-rental but this had nothing to do with the Tenant's two bedroom suite. While the Landlord's party was providing this evidence, I could hear the Landlord whispering to him telling him what to say. The Landlord had to be cautioned during the hearing that the other party was to present the evidence without being coaxed by him.

The Landlord disputed the Tenant's claim stating that the Tenant had received compensation and the return of his damage deposit and that he can present photographs that his parents had moved into the rental unit after this hearing. The Tenant finished stating that the advertisement was clear evidence that the Landlord had not used the property for the reason indicated on the Notice.

Analysis

I have carefully considered the evidence of both parties on the balance of probabilities in making a determination of the Tenant's monetary claim. Section 51(2) of the Act states:

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.

[Reproduced as written]

Therefore, irrespective of whether a landlord pays a tenant the one month's compensation after giving the Tenant the Notice, the Landlord is still liable to an **additional** two months if the Landlord does not use the property for the reason indicated on the Notice.

There is no evidence before me that the Landlord intended or used the property for the second reason on the Notice, being that the rental unit was going to be converted for a nonresidential use. The Tenant provided convincing evidence in the form of an advertisement which clearly shows that a two bedroom suite was placed onto the internet for re-rental and that this contained the Landlord's details and property address. The Landlord argued that the advertisement did not relate to the rental unit but to the neighboring three bedroom suite on the rental property. In this respect, I found the Landlord's testimony confusing and not believable. The Landlord was clearly conferring with another party during the hearing without announcing that party and I find the other's parties evidence was not independent and was being guided by the Landlord inappropriately during the hearing. For me, this resulted in a lack of credibility in what the Landlord was testifying to during the hearing.

I find it farfetched and unlikely that the Landlord moved into a three bedroom suite and then rented out the remaining two bedrooms as a "Groundlevel Suite" without making any mention in the advertisement that it would be shared with the Landlord. The Landlord was put on notice of this hearing back in September 2015 and therefore would have had plenty of time to seek advocacy, assistance, or legal advice on this matter in an effort to provide supporting evidence of his arguments. However, the Landlord did not provide any supporting evidence that his parents moved into the rental unit and instead relies on his oral testimony. In this respect, I do not accept this testimony and find it is not sufficient to rebut the Tenant's more convincing evidence.

I find the Landlord was confused regarding the compensation payable under the Notice. The Landlord's submission that the Tenant failed to pay rent for July 2015 lacks merit as the tenancy was ended by the Landlord through the Notice on July 1, 2015. The Act provides for compensation of one month's rent when the Notice is served to a tenant. The Landlord must understand that **in addition**, the Tenant is also eligible for two months compensation if the Landlord fails to use the property for the reason indicated on the Notice. Therefore, as I have made a finding that the Landlord did not use the

property for the reason on the Notice, the Tenant is entitled to two month's rent payable under the Act in the amount of **\$1,700.00**.

As the Tenant has been successful in this matter, I also award the Tenant the filing fee of **\$50.00** pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is **\$1,750.00**. The Tenant is issued with a Monetary Order which must be served on the Landlord. The Tenant may then file and enforce this order in the Provincial (Small Claims) Court as an order of that court if the Landlord fails to make payment in accordance with the Tenant's written instructions. Copies of this order are attached to the Tenant's copy of this decision.

Conclusion

The Landlord did not use the rental unit for the reason indicated on the Notice. Therefore, the Landlord is ordered to pay the Tenant \$1,750.00.

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: March 24, 2016

Residential Tenancy Branch