



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes DRI. MNDC, FF

Introduction

This application brought by the tenant in November, 2013 was the subject of a hearing before the Residential Tenancy Branch by conference call on February 20, 2014 and March 3, 2014. A decision was made by an arbitrator dated March 5, 2014. In his original application the tenant claimed payment of the sum of \$2,600.00 that he said amounted to an illegal rent increase of \$400.00 per month charged by the landlord for a period 6.5 months. The tenant also claimed compensation pursuant to section 51 of the *Residential Tenancy Act* on the ground that he was served with a two month Notice to End Tenancy for landlord's use and the landlord did not use the rental unit for the purpose stated in the Notice within a reasonable period after the effective date of the Notice. In the arbitrator's decision, she dismissed the tenant's claim for recovery of the monthly rent increase.

With respect to the claim for section 51 compensation equivalent to two months' rent payable under the tenancy agreement, the arbitrator found that the landlord did not exercise a good faith intention to end the tenancy when he gave the tenants a two month Notice to End Tenancy and she awarded the tenants the sum of \$4,000.00, being double the monthly rent under the tenancy agreement.

The landlord applied to the Supreme Court for judicial review of the March 5, 2014 decision. By decision dated December 15, 2015 the landlord's application for judicial review was granted by the Honourable Mr. Justice Walker. Mr. Justice Walker determined that the original decision was patently unreasonable; that there were factual errors in her decision and it should be set aside. Mr. Justice Walker ordered that the original decision be set aside and that a new hearing be conducted by residential tenancy officer other than the officer who conducted the original hearing and he ordered that the parties be at liberty to adduce further evidence to be presented at the new hearing should they wish to do so.

I was appointed to conduct the new hearing ordered by the court. The matter was assigned a new file number by the Residential Tenancy Branch and the matter was set for hearing on June 22, 2016.

The landlord requested that hearing be adjourned because he was not properly notified of the new hearing date and required more time to submit documents in response to the tenant's claim. The landlord's request for an adjournment was granted and the hearing was rescheduled to be heard by conference call on August 11, 2016.

The tenant and the landlord called in and participated in the hearing on August 11, 2016. The landlord provided a written submission setting out his testimony and evidence and he had three witnesses standing by to give evidence, but as it turned out, it was not necessary to hear from them.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as a refund of rent paid in satisfaction of an alleged unauthorized rent increase?

Is the tenant entitled to compensation equivalent to two months' rent pursuant to section 51 (2) of the *Residential Tenancy Act*.

Is the tenant entitled to any additional award as compensation for his moving expenses and if so, in what amount?

Background and Evidence

There is a house and coach house located on the rental property in Surrey. The tenant rented the main and upper floor of the house from the former owner beginning November 1, 2010. The written tenancy agreement was for a term of one year ending October 31, 2011. The agreement did not specify that the tenants were required to move out at the end of the fixed term. The monthly rent was \$1,600.00, payable on the first of each month and the tenant paid a security deposit of \$800.00 at the start of the tenancy.

The landlord purchased the rental property in June, 2011. He prepared a new form of tenancy agreement with the tenants in similar terms to the previous agreement with the former owner. According to the agreement the tenancy was to start on June 26, 2011.

The agreement stated that it was for a fixed term ending November 1, 2011. The standard form agreement was also checked in the appropriate box to indicate that the tenancy may continue on a month to month basis or another fixed length of time at the

end of the term. At the hearing both the landlord and the tenant agreed that the fixed length of time for the tenancy should have stated November 1, 2012 and not "2011" as both parties intended that the agreement was to continue for another year after the expiry of the agreement made with the former owner.

The tenant testified that the house on the rental property had a lower suite and it had been rented out as a separate rental unit during the period that the tenant lived in the rental unit. When the rental property was sold in June, 2011 the lower suite was vacant. The landlord allowed his daughter and her children to occupy the lower suite after the purchase and she lived there for an unspecified time. The tenant said that the lower suite became vacant and the City of Surrey told the landlord that the cooking facilities had to be removed from the suite because it was an illegal suite. The tenant said that in September, 2012 the landlord's wife approached him to ask about their intentions with respect to continuing the tenancy. The tenant said that she told him that the landlord wanted him to take over the rental of the lower suite in addition to the upper suite. The tenant characterized the matter as a request that he "should not refuse". The tenant said that he was aware that the rental property was a revenue property; he wished to continue to reside in the unit and felt that his tenancy would be in jeopardy if he did not agree to take the additional space and pay an increased rent. The tenant said that he did agree to pay increased rent of \$2,000.00 (\$400.00 per month more than previously paid) beginning November 1, 2012. The tenant said that he did not need the additional space and felt that he was under duress in making the agreement.

The tenant was served with a two month Notice to End Tenancy dated March 26, 2013. The Notice to End Tenancy required the tenants to move out of the rental unit by June 1, 2013. The reason for the Notice to End Tenancy was that the rental unit will be occupied by the landlord. The tenant said that he was told that the landlord and his family intended to move into the rental unit and live there while they had their existing house demolished and built a new house on the site. The tenants did not dispute the Notice to End Tenancy. They gave notice and moved out on May 15, 2103, before the effective date of the Notice. The landlord compensated the tenants for the Notice to End Tenancy by paying them one half month's rent. The tenant's security deposit was returned when they moved out.

The tenant testified that he located new rental accommodation in the neighbourhood, six houses away from the rental unit. Because the tenants continued to live in the neighbourhood and have contact with neighbours, they were aware that the landlord did not move into the rental unit; that it was advertised for rent and eventually rented to new tenants in October, 2013.

The landlord testified, as set out in a written submission that he provided, that he acted in good faith in his dealings with the tenant and in giving the Notice to End Tenancy for

landlord's use. The landlord said that it was always his intention to move into the rental unit and live there with his family while his old home was demolished and a new home built on the site. The landlord submitted document to confirm his firm plans to demolish and build a new home. The landlord's evidence included particulars of his efforts to obtain financing for the new construction. The landlord's documentary evidence included documents submitted to establish that the landlord discovered that it was too costly and impracticable to demolish and build a new house on the property where the landlord was residing. Instead of moving to the rental unit and demolishing their existing house, the landlord decided to build on an entirely different property and remain in their current home.

The landlord testified that his daughter lived in the basement suite in the rental property with her two children. She paid no rent. The landlord was notified by the Surrey bylaw officer that cooking facilities were not allowed in the basement. The landlord then removed the cooking facilities and his daughter moved to another location. The landlord did not offer the basement for rent after his daughter moved.

The landlord testified that the tenant was contacted in September, 2012 about his plans after the expiry of the lease in November. He said that the tenant was never threatened with a rent increase. The tenant was offered the additional basement space and he negotiated a new rent for the house with the additional space. The landlord said that. The tenant was free to say no to the rental of the basement. He was not under duress and the tenant's intimation that the house was unaffordable to the landlord as a revenue property was untrue because the landlord had never received any rental income from the basement suite up to that point because the basement had either been vacant or occupied by his daughter who lived there rent free.

Analysis

The landlord gave the tenants a two month Notice to End Tenancy for landlord's use because the landlord intended to occupy the rental unit with his family while constructing a new house in a different location.

Section 49 (3) of the *Residential Tenancy Act* provides that:

(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.

It is open to a tenant to dispute a Notice to End Tenancy given by a landlord on the ground that the Notice was not given in good faith because the landlord had an improper purpose or ulterior motive in giving the Notice. Good faith is a relevant

consideration only with respect to the landlord's intentions when giving the Notice for the purpose of founding a challenge by a tenant seeking to cancel or set aside the Notice to End Tenancy.

The concept of good faith has no bearing upon a claim for compensation pursuant to section 51(2) of the *Act* and the original intention of the landlord when giving the Notice to End Tenancy is irrelevant. There may be cases when changed circumstances have prevented a landlord from using the rental unit for the purpose stated in a two month Notice, but if a tenant has accepted a Notice and moved out pursuant to it, the landlord's original intentions or the changed circumstances are not factors that may be considered when deciding whether or not a tenant is entitled to compensation; the sole question to be determined is whether the rental unit was used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the notice.

I am prepared to accept that when the landlord served the Notice to End Tenancy on March 26, 2013, he fully intended to live in the rental unit throughout the period of his new house construction. The fact that the rental unit was not used for the stated purpose triggers the award, regardless of intention. I find that the tenants are entitled to compensation pursuant to section 51 (2) of the *Residential Tenancy Act* in an amount equivalent to double the monthly rent payable under the tenancy agreement, namely: the sum of \$4,000.00. The compensation provided by section 51(2) is the sole compensation awarded for a breach of the provision. The tenant is not entitled to claim moving expenses in addition to the statutory compensation and the claims for moving expenses are dismissed without leave to reapply.

The tenant has claimed payment of the sum of \$2,600.00, being the amount of increased rent paid for the period from November 1, 2012 to May 15, 2013. The tenant claimed that the \$400.00 per month increase over that period was forced upon the tenants or amounted to a payment made under duress because the tenant was led to believe that if he did not agree to pay the extra amount for the basement his tenancy would not be continued and he would be forced to move. I do not accept the tenant's submission on this point. The landlord asked the tenants about their intentions before the end of the agreed term in November. Clearly the landlord proposed that the tenant rent the whole of the house and there was no doubt that it was to his advantage to do so. The tenant negotiated the amount with the landlord and provided post-dated cheques in payment. The landlord testified that the tenant could have rejected the offer, but did not. According to the tenant he felt some pressure to agree and did so, according to him, because he wished to continue to live in the rental unit. There was nothing in the conduct of the landlord that rises to the level of duress or coercion. The tenant agreed to a new rental agreement to include additional space. He negotiated the new rent. He received the benefit of the additional space for the duration of the tenancy

and I find that there is no basis for an award to the tenant for the return of increased rent paid from November to May. This claim is dismissed without leave to reapply.

The tenant has been partially successful on this application. His original claim was for an amount exceeding \$5,000.00. He has been awarded \$4,000.00. I find that the tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for his original application for a total award of \$4,050.00. I grant the tenant a monetary award in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

This was a new hearing ordered by the Supreme Court. The original decision and order made March 5, 2014 were set aside. After conducting a new hearing with respect to the tenant's claims which have been allowed in part, I have awarded him the sum of \$4,050.00.

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: August 12, 2016

Residential Tenancy Branch