



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF (Landlord's Application)
 MNDC, FF (Tenants' Application)

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 February 10, 2016 and by the Landlord on March 23, 2016. The Landlord made a monetary claim for unpaid rent, money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee. The Tenants made a monetary claim for damage or loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee.

The Landlord, one of the Tenants, and a witness for the Tenant who also appeared to act as the Tenant's advocate appeared for the hearing. The parties provided affirmed testimony during the hearing as well as some documentary evidence prior to the hearing. The parties confirmed receipt of each other's Application and evidence by registered mail. 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 and the witness on the evidence provided.

Issue(s) to be Decided

- Are the Tenants entitled to monetary compensation from the Landlord for having their tenancy ended?
- Is the Landlord entitled to monetary compensation for unpaid rent as a result of the Tenants ending their tenancy prematurely?

Background and Evidence

The parties agreed that this tenancy started on March 16, 2015 for a fixed term. After the end of that fixed term the parties engaged into another written fixed term tenancy agreement which started on April 1, 2015. The tenancy agreement shows that the second fixed term tenancy was for one year and due to end on March 31, 2016. The tenancy agreement shows that after the fixed term ends the tenancy will continue on a month to month basis. The tenancy agreement was signed by both parties and establishes that rent in the amount of \$4,000.00 was payable on the first day of each month.

The Landlord testified that he served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The Notice was provided into evidence and shows an effective vacancy date of March 31, 2016. The Landlord testified that he served the Tenant with the Notice on December 29, 2015.

The Tenant confirmed receipt of the Notice and testified that pursuant to his right to end the tenancy earlier with a 10 day notice, he provided the Landlord with written notice on January 8, 2016 to end the tenancy on January 18, 2016. This was the day the Tenants handed the keys to the rental unit back to the Landlord.

The Tenant confirmed that he requested his compensation payable under the Notice for one month's free rent and the prorated amount of rent for January 2016. The Tenant confirmed during the hearing that this was for 13 days in the amount of \$1,677.00. The Tenant testified that the Landlord only returned back to him \$1,548.00 for the prorated amount and did not give him the one month compensation owed to him for ending the tenancy. Therefore, the Tenant confirmed during the hearing that they now claim \$4,129.42 from the Landlord.

The Landlord testified that as the tenancy was ended by the Tenant in the fixed term portion of the tenancy agreement, the Tenant ended it with the 10 day notice prematurely. The Landlord explained that he did not force the Tenant to leave and ended up losing rent because the Tenant vacated it early. As result, the Landlord states that he should not have given the Tenant the \$1,548.00 but did so because he was not aware of his rights at the time and only learnt of this after he provided the Tenant with this payment.

The Landlord now seeks to recover this amount back (\$1,548.00), plus loss of rent for February 2016 (\$4,000.00). The Landlord stated that he did not claim for the full month of March 2016 because he moved into the rental unit earlier on March 9, 2016 pursuant to the reason on the Notice. Therefore, the Landlord claims an additional \$1,161.00 for the loss of rent for March 1 to March 9, 2016. The Landlord confirmed during the hearing that his total claim from the Tenant was \$6,709.00.

Analysis

I have carefully considered the evidence before me provided by the parties and I make the following findings. I first turn my mind to the Tenant's Application for compensation for \$4,000.00 pursuant to the Notice.

Section 49(4) (c) of the Act allows a landlord to end the tenancy for owner occupancy by giving notice to end the tenancy **effective** on a date that must be, if the tenancy agreement is a fixed term tenancy, not earlier than the date specified as the end of the tenancy. Therefore, as the parties entered into a tenancy agreement that was for a fixed term (up until March 31, 2016) which then required that the tenancy was going to continue on a month to month basis thereafter, the Landlord would have only been able to serve the Notice to become effective for a period after the fixed term ended, namely any time after March 31, 2016. As a result, I find the

Landlord ended the tenancy agreement correctly pursuant to the Act and that the effective date that the Notice was going to take effect, namely in the periodic (month to month) portion of the agreement, was correct.

Section 51(1) of the Act provides that if a tenant has been served with a Notice, a landlord must compensate the tenant with an amount equivalent to one month's rent payable under the tenancy agreement. This is also explained on page two of the Notice. The Act continues to explain that this compensation may be achieved by returning this amount to the tenant at the end of the tenancy. I find the Landlord has not compensated the Tenant for ending the tenancy pursuant to the Act and the Notice and therefore, I award the Tenants their \$4,000.00 compensation which they are entitled to.

With respect to the remainder of the Tenant's' monetary claim and the Landlord's monetary claim, I make the following findings. Section 50(1) of the Act provides that if a tenant is served with a Notice to end a **periodic tenancy**, then the tenant may give the landlord a 10 day notice to end the tenancy earlier. However, the Act does not provide the tenant an opportunity to do this when the tenancy is in the fixed term period. Furthermore, the Notice clearly states that **if** this is a periodic tenancy then the tenancy may be ended with the 10 day notice.

This is further re-enforced and explained in Policy Guideline 30 to the Act which details a party's obligations in fixed term tenancies. The guideline states that neither a landlord nor tenant can break a fixed term tenancy unless there is a cause or mutual agreement to do so. The guideline continues to state:

"A landlord cannot give notice for owner occupancy or purchaser occupancy that will have the effect of ending a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for reasons such as owner occupancy or purchaser occupancy, the landlord must serve a proper Notice to End Tenancy on the tenant. Proper notice in respect of purchaser occupancy includes the pre-requisites to issuance of the Notice to End: any conditions precedent removed from the sales agreement and the purchaser intends in good faith to occupy the rental unit and requests the vendor in writing to issue the Notice to End. The effective date of that Notice will be two months from the end of the month in which the Notice was served but in any case not before the end of the fixed term. The tenant may not, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. "

[Reproduced as written]

Therefore, as the Tenants ended the tenancy earlier contrary to the provisions of the Act, the Tenants are not entitled to any prorated amount of rent that they now claim from the Landlord and that was paid to them by the Landlord.

With respect to the Landlord's monetary claim, I find that because the Tenants ended the tenancy prematurely contrary to the Act they are liable for the losses incurred by the Landlord. I

find that the Landlord mitigated his losses that he would have been entitled to (up until the end of March 2016) by moving in earlier and I award the full amount of his claim for \$6,709.00.

As both parties have been successful with their Applications, I award both parties their filing fee of \$100.00 pursuant to Section 72(1) of the Act. Therefore, the Tenants are awarded \$4,100.00 and the Landlord is awarded \$6,809.00. The Act allows me to offset awards payable against each other. As a result, I find the Tenants are liable for the outstanding balance to the Landlord in the amount of \$2,709.00. The Landlord is issued with a Monetary Order for this amount which must be served to the Tenants for payment. The Landlord may then file and enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Landlord is obligated to pay the Tenants compensation for ending the periodic tenancy. The Tenants are obligated to pay the Landlord for losses associated with ending the fixed term tenancy early. Therefore, the Tenants must pay the Landlord the resulting balance of \$2,709.00.

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 15, 2016

Residential Tenancy Branch

