



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord ("landlord") and her agent, KH ("landlord's agent") and the tenant MP ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord XY called into the conference at approximately 2:36 p.m., when the conference began at 2:30 p.m. and verbally confirmed that her agent had authority to speak on her behalf at this hearing and that she did not wish to participate herself. The landlord exited the call immediately thereafter. The tenant confirmed that he had authority to speak on behalf of "tenant SD," the other tenant named in this application, as an agent at this hearing (collectively "tenants"). This hearing lasted approximately 42 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's written evidence package.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2)(b) of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The tenant stated that the tenants' tenancy began on June 1, 2014 with the former landlord. The landlord's agent confirmed that the individual landlord named in this application, who is the purchaser of the rental unit from the former landlord, signed a contract of purchase and sale, dated September 21, 2015 and took possession of the unit as of December 3, 2015. The contract was provided for this hearing. The landlord's agent who appeared at this hearing became involved as the property manager for this unit as of December 3, 2015.

Both parties agreed that the tenants moved out from the rental unit on November 30, 2015. The tenant stated that monthly rent of \$1,465.00 was payable on the first day of each month and a security deposit of \$715.00 was paid by the tenants and a portion was returned to them as per the agreement with the former landlord. A written tenancy agreement was provided by the tenants for this hearing.

Both parties agreed that the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") and that the effective move-out date was November 30, 2015. The tenant acknowledged that the tenants did not dispute this notice, moved out on the effective date and received compensation as per section 51(1) of the *Act*, which allows one month's rent free pursuant to the 2 Month Notice.

A copy of the 2 Month Notice was not provided for this hearing. However, both parties agreed that the 2 Month Notice was issued to the tenants for the following reason:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord's agent stated that the 2 Month Notice was issued to the tenants so that the landlord's parents could occupy the rental unit personally. The landlord's agent confirmed that the landlord was giving birth to twins and required assistance from her parents in taking care of the children once they were born. The landlord's agent noted that the landlord's parents live out of country and were planning to move to the rental unit in order to assist the landlord. He maintained that the landlord's mother became very ill, was unable to travel and was therefore, unable to move into the rental unit. The landlord's agent stated that because of this, the landlord was required to care for her own children without assistance and due to financial circumstances, was required to list the unit for rental in order to obtain some income. The landlord's agent testified that the rental unit was re-rented from February 1, 2016 for a one year fixed term, after which it may continue on a month-to-month basis. He stated that a written tenancy agreement was signed by the new tenant at a monthly rent of \$1,600.00 and that this

tenancy continues to present. The landlord's agent said that the landlord did not live in the rental unit and it was unoccupied from December 1, 2015 to February 1, 2016.

The tenants seek compensation under section 51(2) of the *Act* for double the monthly rent of \$1,465.00, totalling \$2,930.00. The tenants state that because the landlord did not use the rental unit for the stated purpose on the 2 Month Notice for a period of 6 months, they are entitled to this compensation.

Analysis

Sections 49(5) of the *Act* read as follows:

- (5) A landlord may end a tenancy in respect of a rental unit if*
- (a) the landlord enters into an agreement in good faith to sell the rental unit,*
 - (b) all the conditions on which the sale depends have been satisfied, and*
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to double the monthly rent if the landlord does not use the premises for the purposes stated in the 2 Month Notice issued under section 49(3) or (4) of the *Act*. Section 51(2) 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.

The following facts are undisputed. The landlord is a purchaser who bought the rental unit from the former landlord. The tenants vacated the rental unit on November 30, 2015 pursuant to a 2 Month Notice, which was issued by the former landlord after the purchaser gave notice to end the tenancy in order for her parents to occupy the rental unit. Neither the landlord nor her

parents moved into the rental unit. The landlord re-rented the unit as of February 1, 2016 to present. The tenancy is for a one year fixed term at a rate of \$1,600.00 per month. Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as she did not use the rental unit for her own personal residence or for her parents to occupy for at least 6 months after December 1, 2015. Accordingly, I find that the tenants are entitled to double the monthly rent of \$1,465.00 as compensation under section 51, which totals \$2,930.00.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$3,030.00, against the landlord. The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 24, 2016

Residential Tenancy Branch