Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARRAM HOLDINGS INC
and [tenant name suppressed to protect privacy]

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 landlords' agent, RI ("landlord") and the two tenants 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 confirmed that he had authority to speak on behalf of both landlords named in this application, as an agent at this hearing (collectively "landlords"). The "individual landlord" and the "landlord company" are the two landlords named in this application. This hearing lasted approximately 61 minutes in order to allow both parties to fully present their submissions.

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

The tenants confirmed that they submitted their written evidence packages by way of registered mail to the landlords on October 14, 2016 and October 16, 2016. The landlord stated that he had not received the written evidence package. As the evidence was served late, less than 14 days prior to this hearing date, contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, and the landlords had not received it, I advised both parties that I could not consider it at this hearing.

The only written evidence that the landlords already had in their possession was a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 28, 2015 ("2 Month Notice") and an RTB decision, dated February 12, 2016, made by another Arbitrator from a "previous hearing" between these parties. The file numbers for that previous hearing appear on the front page of this decision. Accordingly, I considered both of the above documents since the landlords already had copies of it and had reviewed it.

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.

Both parties agreed to the following facts. This tenancy began on May 1, 2010 and ended on September 30, 2015. Monthly rent of $2,222.00 was payable on the first day of each month. The tenants' security deposit was already dealt with at the previous hearing. A written tenancy agreement was signed by both parties. The rental unit is a two-bedroom apartment.

Both parties agreed that the tenants were served with a 2 Month Notice and the effective move-out date was September 30, 2015. Both parties agreed that the tenants 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.

Both parties agreed that the 2 Month Notice was issued to the tenants for the following reason:

> *A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.*

The landlord stated that the 2 Month Notice was issued to the tenants so that the individual landlord's father ("father") could move into the rental unit. The landlord said

that the individual landlord was the only person, that he was aware of, that owned voting shares in the landlord company, which is a family corporation. The landlord said that he was unsure as to whether the father owns any voting shares.

The landlord maintained that significant renovations were required in the rental unit after the tenants vacated and before the father could move into the unit. The landlord said that the unit was vacant from October 1, 2015 until mid-December 2015, when the renovations were complete and the father moved in. The landlord explained that the father lives in another Canadian Province, but he wanted a local place where he could spend time with his daughter. The landlord noted that the father pays $3,500.00 total for rent for the entire unit.

The landlord claimed that the father required assistance in paying the full rent and made a request to the landlord company in order to sublet the rental unit. After obtaining information from the RTB, the landlord claimed that the sublease consent could not be withheld, so the landlord company had to agree to sublet the rental unit. The landlord stated that the rental unit was advertised for re-rental and he was searching for a new tenant from December 2015 to January 2016. A person who was supposed to move into the unit in February 2016 was unable to because of health problems, according to the landlord. Yet, the landlord informed the Arbitrator at the previous hearing, as noted at pages 2 and 6 of her decision, that the rental unit was being “sublet” to another person by the father for $3,300.00 per month. The landlord said that this was a mistake, that he thought it was sublet at that time but it was not, and the sublease occurred in June 2016 for a rate of $2,300.00 per month, not $3,300.00. The landlords’ claim for rental loss of $6,000.00 was dismissed it its entirety at the previous hearing on the basis of the landlord’s evidence about the sublease at being in place for $3,300.00

The tenants testified that they were given the 2 Month Notice because they refused to pay a higher rent as requested by the landlords. They claim that the landlord company advertised the unit for re-rental in October 2015 in order to obtain a higher rent. The tenants said that they had a friend inquire as to the re-rental and this friend was contacted by the landlord directly, which the landlord agreed with in his testimony. The tenants said that this friend was not told it was a sublease with the father, but was rather given a written tenancy agreement in order to rent the entire unit for the full amount of $3,500.00 per month with the landlord company and the individual landlord named as the landlords. The landlord agreed stating that it was a mistake to include the name of the individual landlord and the landlord company in the place of the landlord, rather than the father, who was intending to sublet it. He maintained that this mistake was corrected for the new tenant who moved in as of June 22, 2016.

The landlord did not provide a copy of the tenancy agreement with the new tenant, indicating who the correct landlord was, the correct rent amount being paid, or whether this person is renting the entire unit or just one bedroom and using the common areas. The landlords only provided a "Form K" for strata responsibilities, for a tenancy commencing on June 1, 2016, with the name of the new tenant partially redacted and a signature by the landlord who appeared at this hearing under the "landlord" section of the form.

The tenants seek compensation under section 51(2) of the *Act* for double the monthly rent of $2,222.00, totalling $4,444.00. The tenants state that because the landlords did not use the rental unit for the stated purpose on the 2 Month Notice for a period of six months, they are entitled to this compensation.

Analysis

Section 49(4) of the *Act* reads as follows:

> *(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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 landlords do not use the premises for the purposes stated in the 2 Month Notice issued under section 49(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 individual landlord owns the family corporation, which is the landlord company named in this application. The tenants vacated the rental unit on September 30, 2015 pursuant to a 2 Month Notice, which was issued by the landlords in order for the father to occupy the rental unit.

I prefer the evidence of the tenants as compared to the landlord. I found the tenants to be more forthright, credible witnesses than the landlord. I find that the landlord changed his testimony based on the circumstances. In February 2016, the landlord informed the Arbitrator at the previous hearing that the rental unit was being subleased at $3,300.00 per month. These facts changed as of October 2016 during this current hearing, when the landlord informed me that the unit was not subleased in February 2016, but rather June 2016, after the relevant six month period was over. The landlord claimed that no one lived in the rental unit except for the father, who lives in another Province but visits occasionally. Yet, the evidence from the tenants, which the landlord agreed with, shows that the landlord company was attempting to re-rent the entire unit for the full price of $3,500.00 to their friend, not to sublease one room at a reduced price from the father.

Based on the above inconsistencies in the landlord's testimony and the evidence from the tenants, I find that the father did not occupy the rental unit for the relevant six month time period after the tenants vacated. I find that the landlords did not provide sufficient proof, on a balance of probabilities, that the father occupied the rental unit. There are no airplane tickets or other documentary evidence showing that the father travelled to the rental unit from his permanent residence which is out of Province. Although the landlords provided a copy of a letter, dated April 1, 2016, from the rental building strata corporation, indicating that the father "has been the tenant" at the rental unit since October 1, 2015, and that "no other tenants have been registered or moved into the unit," this does not prove that the father actually "occupied" the rental unit. Registering a tenant with the strata corporation does not indicate proof of occupancy. Leaving a unit vacant during renovations is not proof of occupancy. Attempting to sublet or re-rent the unit to a third party and then having this party move in, is not proof of occupancy by the father.

Therefore, I find that the landlords breached section 51(2)(b) of the *Act*, as they did not use the rental unit for the purpose set out in section 49(4) of the *Act*. Accordingly, I find that the tenants are entitled to double the monthly rent of $2,222.00 as compensation under section 51(2), which totals $4,444.00.

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

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of $4,544.00, against the landlords. The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the

landlord(s) 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: November 08, 2016

Residential Tenancy Branch