Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The tenant vacated the premises pursuant to a two month Notice to End Tenancy for landlord use of property and now applies for an amount equivalent to two months rent under s. 51 of the *Residential Tenancy Act* (the "*Act*").

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Have the landlords or a close family member occupied the premises for at least six months within a reasonable time after the effective date of the Notice.

Background and Evidence

The rental unit is a four bedroom house. There is a second rental unit in an unattached building but it plays no part in this dispute.

The tenancy started at the end of August 2015. The tenant says the monthly rent was $1900.00. The landlords say this amount was composed of $1700.00 for rent and $200.00 for utilities. They say the $200.00 amount was somehow adjustable under the tenancy agreement but that it remained at $200.00 throughout the tenant's stay. Neither side provided a copy of the tenancy agreement.

The landlords issued a two month Notice to End Tenancy at the end of August 2015, with an effective date of October 31, 2015. A copy of the Notice was not provided by either side.

The tenant says the landlords really just wanted to increase the rent, however she did not dispute the Notice and so it's too late to make that argument.

She vacated the premises at the end of October. She returned to the premises in April to retrieve mail and discovered that a new family, not related to the landlords, was living there.

The landlord Ms. R. testifies that her father in law was to move in on November 1, 2015 but the rental unit had suffered water damage that required repair first. The repair was complete in January 2016 but by then her father in law had made other plans. As a result, her father in law sublet the premises February 1, 2016 to the people the tenant would later find there in April.

Ms. R. adduced a written 46 month fixed term tenancy agreement with her father in law at a monthly rent of $2200.00, commencing November 1, 2016. She adduces a written 30 month fixed term tenancy agreement between her father in law and the present, unrelated tenant for the same rent, commencing February 1, 2016. She states that in her opinion, the landlords could not reasonably refuse to let her father in law sublet the premises.

Analysis

Section 51 of the *Act* provides,

> 51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
>
> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

(*emphasis added*)

Given the repairs that the landlords had to undertake after the applicant tenant left, I find that the six month period in s. 51(2)(b), above, started in January 2016.

The stated purpose of the Notice was to permit the landlords or a close family member to occupy the rental unit. There is no argument but that Ms. R.'s father in law; Mr. S.R.'s father, is a close family member.

Ms..R.'s father in law did not occupy the premises for "at least six months." He conveyed away his right to exclusive possession, and thus occupation, of the rental unit to the present tenant within that six month period.

Subsection 34 of the *Act* provides that a tenant may not sublet a rental unit without a landlord's written consent but if the tenancy agreement is a fixed term tenancy agreement for 6 months or more, the landlord must not unreasonably withhold the consent required.

In my view, the fact that the landlords would incur a penalty equivalent to two months rent by consenting to Ms. R.'s father in law subletting the rental unit before the expiry of the six month period would have been a very good reason for refusing his request to

sublet. I find they would not have been unreasonably withholding their consent had they refused to consent to the subletting.

I find that the landlords have breached s. 51 of the *Act* and that the tenant is entitled to an amount equivalent to double her monthly rent.

There remains the question of what the “rent” was that the tenant was paying. The tenant says it was $1900.00. The landlords say the rent was $1700.00 and that the tenant was charged $200.00 for utilities.

The *Act* defines what “rent” is:

> "rent" means **money paid or agreed to be paid**, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and **for services or facilities**, but does not include any of the following:
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> (a) a security deposit;
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> (b) a pet damage deposit;
>
> (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

(*emphasis added*)

A “service or facility” is also defined in the *Act*:

> "service or facility" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:
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> (a) appliances and furnishings;
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> (b**) utilities** and related services;
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> (c) cleaning and maintenance services;
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> (d) parking spaces and related facilities;
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> (e) cablevision facilities;
>
> (f) laundry facilities;
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> (g) storage facilities;
>
> (h) elevator;
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> (i) common recreational facilities;
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> (j) intercom systems;
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> (k) garbage facilities and related services;
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> (l) heating facilities or services;
>
> (m) housekeeping services;

(*emphasis added*)

Under the tenancy agreement the landlords agreed to provide utilities; by definition a "service or facility." An amount agreed to be paid for a service or facility is "rent." Therefore, if the tenant agreed to pay $200.00 for utilities, that was rent.

The tenant is entitled to an amount equivalent to double $1900.00, that is: $3800.00, as claimed.

Conclusion

The tenant is entitled to a monetary award of $3800.00 plus recovery of the $100.00 filing fee.

There will be a monetary order against the landlords in the amount of $3900.00.

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: November 01, 2016

Residential Tenancy Branch