



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 tenant's 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, HF ("landlord") and the 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 confirmed that he had authority to speak on behalf of the two landlords named in this application, as an agent at this hearing (collectively "landlords"). This hearing lasted approximately 35 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. The landlord stated that he did not receive all of the tenant's written evidence but that he already had the documents from earlier in the tenancy. The documents include the written tenancy agreement, the move-in and move-out condition inspection reports, the 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") and a craigslist ad to re-rent the unit. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application. I advised both parties that I was considering the tenant's written evidence at this hearing because the landlords already had the documents, most of which were issued by them, and had reviewed the documents prior to the hearing.

Issues to be Decided

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

Is the tenant 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 tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2013 and ended on February 29, 2016. Monthly rent of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenant and it was returned in full to her by the landlords. A written tenancy agreement was signed by both parties.

Both parties agreed that the tenant was served with a 2 Month Notice. Both parties were unsure of the effective move-out date on the notice, as they believed it was February 29, 2016. The copy of the notice provided by the tenant indicates an effective move-out date of March 31, 2016. Both parties agreed that the tenant moved out pursuant to the notice and received compensation as per section 51(1) of the *Act*, which allows one month's rent free.

The reason on the notice provided by the tenant states the following:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenant agreed that she was issued the notice by the landlords for the above reason. The landlord said that he issued the notice in December 2015 for the tenant to vacate by the end of February 2016, because the landlords wanted the property for "self-use" and described it as their intention to demolish and build a new house. He stated that the landlords were unable to obtain permits to demolish or renovate the property so they had to re-rent the unit to a new tenant. He explained that he posted an ad for re-rental on March 15, 2016 and the tenant provided a copy of the google search for this ad. The landlord testified that a new tenant moved in to the rental unit as of April 1, 2016 for a one-year fixed term at a rent of \$2,500.00 per month. He said that the new tenant still lives there at present. The tenant said that she has attended at the rental unit since vacating and spoken to this new tenant from April 6, 2016 to present and that she is still living there at a rent of \$2,500.00 per month.

The tenant seeks compensation under section 51(2) of the *Act* for double the monthly rent of \$2,100.00, totalling \$4,200.00. The tenant states that because the landlords did not use the rental unit for the stated purpose on the 2 Month Notice for a period of 6 months, she is entitled to this compensation.

Analysis

Section 49 of the *Act* reads in part, as follows:

(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.

...

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant...

Section 51(2) of the *Act* establishes a provision whereby a tenant is 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(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 tenant vacated the rental unit on February 29, 2016 pursuant to a 2 Month Notice, which was issued by the landlords. Neither the landlords, their spouses, nor any close family members moved into the rental unit. The landlords did not have the necessary permits and approvals to demolish the unit at the

time that the 2 Month Notice was issued to the tenant. The landlords did not demolish the rental unit or repair it. The landlord re-rented the unit as of April 1, 2016 to present. The tenancy is for a one year fixed term at a rate of \$2,500.00 per month. Therefore, I find that the landlords breached section 51(2)(b) of the *Act*, as they did not use the rental unit for any of the purposes in section 49 of the *Act* for at least six months after the tenant vacated. Regardless of whether the notice was issued for personal use or for demolishing, the landlords did not use it for any of the above purposes. Accordingly, I find that the tenant is entitled to double the monthly rent of \$2,100.00 as compensation under section 51, which totals \$4,200.00.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour in the total amount of \$4,300.00, against the landlords. The tenant is 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 02, 2016

Residential Tenancy Branch