



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation and the filing fee.

The tenant served the landlord with a notice of hearing by registered mail on July 14, 2016 to the address provided by the landlord. The tenant filed a copy of the tracking slip. The tenant also testified that he informed the landlord by text message about the notice of hearing package mailed on July 14, 2016.

Despite having been notified of the tenant's application and the date/time of the hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to compensation pursuant to a s.49 notice to end tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on March 15, 2011. The monthly rent was \$1,500.00 due on the first of the month. On March 20, 2016, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The notice was served in the two page standard approved format. The effective date of the notice was May 18, 2016.

The landlord checked off two reasons for the notice to end tenancy. One was that the landlord or a close family member intended to move in and the other was that all the conditions for the sale of the rental unit have been satisfied and that the purchaser has asked the landlord to give this notice as the purchaser or a close family member intended to move in. The tenant did not dispute the notice to end tenancy. He started looking for another place to rent.

On April 01, 2016, the tenant paid rent for the month of April 2016. Shortly after, the tenant found alternative accommodation and informed the landlord that he would like to move out on April 15, 2016. The landlord agreed and returned half a month's rent to the tenant along with the security deposit. The tenant moved out on April 15, 2016.

The tenant provided proof that the rental unit sold on April 25, 2016. The tenant testified that the landlord did not provide any written confirmation that the purchaser intended to occupy the rental unit.

Analysis

Section 49 of the *Residential Tenancy Act* deals with a landlord's notice to end tenancy for landlord's use of property. Section 49 (5) states:

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, 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 49(7) of the *Residential Tenancy Act* states that a notice under this section (49) must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Residential Tenancy Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Pursuant to section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice 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.

In this case, I find that the tenant received a notice to end tenancy for landlord's use of property that complied with Section 52 of the *Residential Tenancy Act*. Based on the testimony of the tenant and the documents filed into evidence, I find that since the tenant received a section 49 notice he is entitled to compensation pursuant to section 51, in the amount of one month's rent of \$1,500.00.

The tenant testified that he did not receive this compensation and that he paid rent up to the last day of tenancy. Therefore I award the tenant \$1,500.00.

The tenant was also seeking compensation under s.51(2). Pursuant to Section 51(2) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case one of the reasons for the notice was that the unit had sold and that the purchaser has asked the landlord to give this notice as the purchaser or a close family member intended to move in. The tenant did not dispute the notice and therefore did not ask the landlord for a letter from the purchaser stating that he or his family member intended to move in. The tenant has not proven that the purchaser or his family member had intentions to move in and failed to do so.

The landlord indicated on the notice to end tenancy that the conditions of the sale of the unit had been satisfied. The tenant provided evidence confirming that the unit was sold shortly after he moved out. The tenant did not provide any testimony or documents regarding the occupants of the rental unit after the sale took place.

Even though the landlord provided two reasons on the notice to end tenancy, he may have done so in error. However he has followed through with at least one of the reasons for the notice to end tenancy.

The tenant had the option to dispute the notice at the time it was served to him, but he chose to accept it and move out. Accordingly, I find that the tenant has not proven an entitlement to compensation pursuant s. 51(2) of the *Residential Tenancy Act* and therefore I dismiss the tenant's application for compensation in the amount of two months' rent.

The tenant has established a claim of \$1,500.00. Since the tenant has proven a portion of his claim I award him the recovery of the filing fee of \$100.00

Overall the tenant has established a claim of \$1,600.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for \$1,600.00.

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: January 10, 2017

Residential Tenancy Branch