



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for compensation payable under section 51(2) of the Act and other damages or losses. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The details of dispute section of the tenant's application indicated that the tenant was seeking compensation payable where a landlord does not use a rental unit for the purpose stated on a 2 Month Notice to End Tenancy for Landlord's Use of Property. However, the sum claimed by the tenant exceeded the compensation payable under that provision of the Act (the equivalent to two months of rent). The tenant explained that her claim included other losses associated with dishonoured payments in her bank account. I noted that the tenant had provided a Monetary Order worksheet with the documentation she submitted but the second page did not provide for any specific claims or amounts in the space provided. Nor, did the details of dispute indicate any other losses were the subject of this application. The landlord confirmed that the Monetary Order worksheet she received was also devoid of any amounts on the second page but that she was aware the tenant was seeking compensation equivalent to two months of rent.

Having been satisfied the tenant sufficiently laid out her claim for compensation for two months of rent under section 51(2) of the Act I informed the tenant that I was prepared to deal with that issue but that the other claims were not sufficiently identified and I would not consider them further. The tenant was given the option to withdraw and re-file or proceed on the one claim. The tenant chose to proceed with the claim for compensation under section 51(2) only. Accordingly, I dismissed the other claims made by the tenant and proceeded to consider the tenant's claim for compensation under section 51(2) of the Act.

Issue(s) to be Decided

Is the tenant entitled to compensation that is payable under section 51(2) of the Act?

Background and Evidence

The tenancy started in March 2014 and ended July 31, 2015. The tenant was required to pay monthly rent of \$1,332.50 on the first day of every month.

On April 30, 2015 the landlord served a *1 Month Notice to End Tenancy for Cause* ("1 Month Notice") and on May 6, 2015 the landlord served a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") with an effective date of July 31, 2015. The tenant disputed both Notices to End Tenancy and a hearing was held on June 22, 2015 (file numbers referenced on the cover page of this decision). The Arbitrator hearing that application upheld the 2 Month Notice and found the tenant entitled to compensation payable under section 51 of the Act. Having upheld the 2 Month Notice, the Arbitrator found it unnecessary to make a decision on the 1 Month Notice.

The tenant vacated the rental unit on July 31, 2015 and obtained the benefit of not paying rent for the month of July 2015 as provided under section 51(1) of the Act; although, it appears the landlord attempted to cash the July 2015 rent cheque before it was dishonoured for insufficient funds.

By way of this Application, the tenant seeks further compensation equivalent to two months of rent, as provided under section 51(2) of the Act.

It is undisputed that the 2 Month Notice served upon the tenant and upheld by the Arbitrator indicated the reason for ending the tenancy was that the landlord or landlord's spouse or close family member (father, mother, child) of the landlord or landlord's spouse intended to occupy the rental unit. It was undisputed that the landlord's reasons for ending the tenancy, as presented for the previous dispute resolution proceeding, would be that the landlord's step-daughter would be moving into the rental unit to help care for the landlord's husband who was very ill. It was also undisputed that the landlord's step-daughter did not move into the rental unit and the rental unit was advertised for rent by way of an internet posting on October 14, 2015.

The tenant was of the position that the landlord's intentions when the 2 Month Notice was issued were not genuine and the 2 Month Notice was used as a way to end the tenancy since there was insufficient evidence to uphold the 1 Month Notice and the

landlord wanted to either re-rent or sell the property. Since the landlord's step-daughter did not move in and the unit was advertised for re-rental, the tenant is of the position that the landlord did not use the rental unit of the stated purpose and must now pay the tenant compensation under section 51(2) of the Act.

The landlord testified that it was the landlord's intention to have her step-daughter move in to the rental unit when the 2 Month Notice was issued and the previous hearing was held but her husband became more ill and starting in August 2015 her husband was in the hospital more than he was at home so the help caring for her husband at home was no longer needed.

The landlord testified that her husband posted the advertisement in October 2015 but the landlord did not respond to the enquiries or show the unit to prospective tenants and did not re-rent the unit. In early November 2015 the landlord took the advertisement off the internet. Around that same time her husband remained in hospital care for the remainder of his time until he passed away in December 2015.

The landlord testified that in January 2016 she listed the house for sale and the sale completed on March 15, 2016.

The landlord affirmed that the rental unit remained vacant from the time the tenant's tenancy ended until such time the house sale completed. The landlord was of the position that circumstances changed because her husband health deteriorated sooner than expected but that the landlord did not re-rent the unit before it was sold.

As for the whether the landlord actually rented the unit after the tenant's tenancy ended and the property being transferred to new owners in March 2016, the tenant acknowledged that she had no knowledge to the contradict the facts put forth by the landlord.

Analysis

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act.

Under section 51(1) of the Act, a tenant entitled to receive the equivalent of one month of rent as compensation for receiving a 2 Month Notice. This compensation has been received by the tenant by way of not paying rent for July 2015.

Should the landlord fail to fulfill the purpose stated on the 2 Month Notice the landlord must pay the tenant additional compensation in an amount equivalent to two months of rent under section 51(2) of the Act. This is the section of the Act the tenant relies upon in making her claim against the landlord.

Section 51(2) provides:

(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 ...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The reason for ending the tenancy, as stated on the 2 Month Notice served upon the tenant, was that the rental unit would be occupied by the landlord, the landlord's spouse or close family member of the landlord or landlord's spouse. Accordingly, in order to receive additional compensation, I must be satisfied that the rental unit was not used for this purpose for at least 6 months beginning within a reasonable period of time after the effective date of July 31, 2015, as provided under section 51(2)(b) described above.

The tenant submitted that the landlord never intended to use the rental unit to house her step-daughter and that her true intentions were to either re-rent or sell the property; however, the landlord's intentions in serving the 2 Month Notice are not relevant to this claim. Rather, a landlord's intentions are relevant where a 2 Month Notice is under dispute. The landlord's intentions were raised during the previous hearing when the 2 Month Notice was under dispute and the Arbitrator hearing that case considered the landlord's intentions. It is not before me to re-consider the landlord's intentions. What is relevant in making this decision is whether the landlord actually used the rental unit for the reason stated on the 2 Month Notice for at least six months.

It is important to point out that the landlord, landlord's spouse or close family member had to have "occupied" the rental unit and the Act does not use the word "reside". The Act does not define the word "occupy" or "occupied" and I have turned to the meaning provided by Black's Law Dictionary. "Occupy" is defined as: "to take or enter upon

possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession.”

While the landlord’s step-daughter did not move into the rental unit, or otherwise occupy the rental unit, I am satisfied by the unopposed evidence before me that the rental unit remained vacant after the tenancy ended until such time the property was transferred to new owners in March 2016. Accordingly, I am satisfied that the landlord occupied the rental unit for at least six months starting August 1, 2015 while the unit was vacant. I have found that the landlord was occupying the rental unit as the landlord was in possession of the unit and it was not occupied by any other persons during that time.

In light of the above, I am satisfied the landlord fulfilled the stated purpose on the 2 Month Notice and I find the tenant is not entitled to compensation under section 51(2). Therefore, I dismiss her claim against the landlord.

Conclusion

The tenant’s application has been dismissed.

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: February 15, 2017

Residential Tenancy Branch