



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.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness NW" testified on behalf of the tenant at this hearing and both parties had equal opportunities to question the witness. This hearing lasted approximately 42 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 and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed personal receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 9, 2016 ("2 Month Notice"), on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) 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 both parties and witness NW, 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 September 16, 2012 and ended on September 30, 2016. Monthly rent of \$800.00 was payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and it was returned in full to him by the landlord. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing.

The tenant seeks compensation under section 51(2) of the *Act* for double the monthly rent of \$800.00, totalling \$1,600.00, plus recovery of the \$100.00 application filing fee. The tenant stated that because the landlord has not used the rental unit for the stated purpose on the 2 Month Notice, the tenant is entitled to compensation.

The effective move-out date on the 2 Month Notice is November 1, 2016. The landlord said that the correct effective date should have been November 30, 2016, because it was given to the tenant on September 9, 2016. Both parties agreed that the tenant moved out pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The reason indicated on the notice is:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord said that he issued the 2 Month Notice because his mother was supposed to move into the rental unit. He stated that his mother was living with him but when he had a new baby, he needed the extra space in his own home. He explained that his mother has not moved into the rental unit because she is still out of town visiting and caring for the landlord's father, who suddenly had a stroke. He said that his father had been sick for some time and his condition deteriorated into a stroke, such that the landlord booked an airplane ticket on September 10, 2016, for his mother to leave town

on September 27, 2016. He stated that his mother will be out of town until his father's condition improves. He said that his mother was due back in December 2016 and then January 2017 but she was unable to return because of the landlord's father's bad health condition. The landlord produced the email confirmation of the airplane tickets. The landlord explained that his mother's belongings are still at his place until his mother comes back to town and reclaims them to move.

Both parties agreed that the landlord had a new tenant move into the rental unit after the tenant vacated. The landlord said that this occurred in November 2016. He explained that the new tenant does not always pay rent, but when he does, it is the same rent as the tenant's, at \$800.00 per month. He maintained that the tenancy is not on a fixed term and that this new tenant is a friend of his, who is watching the rental unit as a favour, since the landlord does not want squatters or break-ins at the unit. He said that the new tenant will only stay until his mother returns from her trip and then he must vacate.

The tenant said that he only moved out of the rental unit because the landlord issued the 2 Month Notice to him. He explained that he wanted to stay and if he knew the landlord would not need the place until his mother returned from her trip, the landlord should have let him stay longer. He claimed that he moved out earlier than the effective date on the notice, in order to give the landlord time to settle his mother, since the landlord was having a new baby. He stated that the 2 Month Notice was issued on September 9, 2016, one day before the airplane ticket was booked for his mother on September 10, 2016, so the landlord already knew his mother would be leaving town and could not move into the rental unit right away.

Witness NW testified that she lives across the hall from the rental unit. She said that she has been living in her own unit since October 2013. She claimed that she began talking to the tenant in approximately October 2014 and would often see him in the hallway while he was living at the rental unit. She said that she noticed a new tenant going in and out of the rental unit after the tenant vacated, and she began talking to him on October 17, 2016. She explained that he confirmed he had just moved into the rental unit. The tenant produced a text message, dated October 17, 2016, which witness NW confirmed sending to the tenant, indicating that the new tenant was not an elderly lady but a young male who had just moved into the rental unit. Witness NW described the new tenant, including his name and physical appearance, and the landlord confirmed during the hearing, that that was the correct new tenant. She said that she saw the new tenant again on February 5 and 20, 2017, and he was still living at the rental unit. She maintained that the tenant told her to keep a lookout for anyone moving into the rental unit after he moved out, and report back to him, which she did.

Analysis

Section 49(3) of the *Act* reads 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.

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 landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) 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 early on September 30, 2016, pursuant to the 2 Month Notice, which was issued by the landlord for his mother to move into the rental unit. The landlord's mother did not move into the rental unit and still has not done so. The landlord has not taken steps to accomplish his mother's move into the rental unit, nor did he use the rental unit for that purpose. He still has his mother's belongings at his own place and the new tenant is still living in the rental unit and paying rent to the landlord. The landlord re-rented the unit sometime in October or November 2016 to present. Although there is no fixed length of time for the tenancy, the landlord collects the same amount of rent as he did from the tenant of \$800.00 per month.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as he did not take steps or use the rental unit for his mother to occupy within a reasonable period of time after the corrected effective date of November 30, 2016. At the time of this hearing on February 24, 2017, it was almost three months after the effective date and the landlord said that he did not know when his mother would be returning from her trip. He

said that the new tenant would stay until his mother returned. Accordingly, I find that the tenant is entitled to double the monthly rent of \$800.00 as compensation under section 51, which totals \$1,600.00.

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

Conclusion

I issue a monetary Order in the tenant's favour in the total amount of \$1,700.00, against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: March 1, 2017

Residential Tenancy Branch

