



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

This hearing dealt with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. 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.

Issue(s) to be Decided

Are the tenants entitled to compensation from the landlord as claimed?

Background and Evidence

The tenancy started in March 2015 with the former owner of the property. The monthly rent was \$1,900.00 payable on the first day of every month and the tenants had paid a security deposit of \$950.00. The rental unit was put up for sale by the former owners and effective June 28, 2016 title of the property was transferred to the current owners. On June 28, 2016 one of the current owners (named as landlord in this decision) attended the rental unit and met with the tenant. Both the tenant and the landlord signed a document on that day. The document reads:

We [name of tenants] are officially giving our new landlord 10 days notice today to vacate our home at [rental unit address] on July 7, 2016.

[Name of landlord] has given us 2 months notice today, and we have come to an arrangement to leave our place on July 7/2016 and [name of landlord] will pay us a pro-rated rent amount for the remaining days of July, a total of [illegible] (24 days @ 61.2 a/day). [Name of landlord] will also return our security deposit to us in the amount of 950\$.

[Name of landlord] will pay the money owed on July 7/2016 when we turn over our keys.

2150\$ total money owed.

The tenants did not pay any rent on July 1, 2016 and possession was returned to the landlord on July 7, 2016. The landlord gave the tenant a cheque dated July 7, 2016 in the sum of \$2,100.00. On the memo line of the cheque it states: "final tenants payment (with damage deposit) for settlement.

Both parties provided consistent testimony that the landlord did not serve the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property in the approved form. Both parties provided consistent testimony that after this tenancy ended the rental unit was re-rented to other tenants.

Tenant's position

The tenant seeks compensation of \$4,800.00 from the landlord. This sum is to two months of rent at the monthly rate of \$2,400.00.

The tenant submitted that when the house was for sale, the former owners told the tenants that the purchasers were investors and willing to keep them as tenants. However, the landlord (being the purchaser at the time) approached the tenants and stated that the tenants would have to move because he would be moving into the unit with his family. The tenant looked into his rights as a tenant and determined they were entitled to receive a 2 Month Notice under the Act and compensation equivalent to a month's rent. Given the oral statements of the landlord the tenants started looking for a new home, which they found and secured a week later. When the landlord attended the property on June 28, 2016 the tenant expected the landlord to serve them with a 2 Month Notice in the approved form but the landlord did not come with any paperwork. So, the tenant drafted up the document described above. The tenant pointed out that the 10 days of notice they gave to the landlord and the compensation they described in the document is consistent with a tenant who has received a 2 Month Notice in the approved form.

The tenant testified that he had returned to the rental unit in August 2016 to see if there was any mail for them at their old house and discovered the rental unit had been re-rented to new tenants. The tenant returned to the property with his wife, the co-tenant, and they had a discussion with the new tenants. The new tenants informed the tenants that they had found the rental advertised on-line and they were paying rent of \$2,400.00 per month.

The tenant submitted that they incurred costs to move and a higher monthly rent as a result of the end of this tenancy and that they would not have otherwise moved except for the landlord's representation to them that he would be moving into the rental unit.

I noted that the cheque given to the tenant by the landlord is less than the amount indicated on the document dated June 28, 2016. In the tenant's written statement the tenant indicates that they accepted less than they were entitled to receive as compensation because the landlord stated he was struggling with two mortgages.

Landlord's position

The landlord submitted that when the co-owners acquired the property it was for the purpose of keeping it as a rental property. The landlord stated that when he went to the property on June

28, 2016 it was for the purpose of meeting the tenants and finding out who was living in the property and to sign a new tenancy agreement. Upon arriving at the rental unit the landlord saw that the tenants were already packed and preparing to move. According to the landlord this came as a shock as they had a mortgage to pay and on top of that the tenant was telling the landlord he had to pay their moving expenses.

The landlord stated that he agreed to pay for moving expenses even though he was not bound to do so and this was on top of the loss of rent suffered as a result of the vacancy until August 15, 2016 when the new tenants moved in. The landlord also stated that the sum of \$2,100.00 was paid so that the tenants would move out and return the keys on July 7, 2016 so as to protect the property and that the payment represents a settlement in response to the tenant's argument that he had rights.

The landlord pointed out that a 2 Month Notice was not given to the tenants and he is not obligated to give the tenants any further compensation.

The landlord also stated that the new tenants only remained in the property for two months and that it is still vacant as of the day of the hearing.

The tenant refuted some of the landlord's statements as follows. The tenant stated that the landlord did not offer or present them with a new tenancy agreement on June 28, 2016. The tenant did not indicate he would not be returning the keys so the \$2,100.00 payment was not for return of the keys.

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 as provided under section 51 of the Act. The tenant is also entitled to end the tenancy early by giving the landlord 10 days of written notice, as provided under section 50 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 is obtained when the tenant occupies the rental unit without paying last month's rent, or having the last month's rent refunded or a combination of both if the tenancy ends part way in the month because the tenant has elected to end the tenancy early under section 50 of the Act.

Should the landlord fail to fulfill the purpose for ending the tenancy as provided by way of 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. Section 51(2) is the provision under the Act that the tenants rely upon in making their 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.

Under section 49 of the Act, there are multiple reasons for a landlord to end a tenancy for landlord's use. Accordingly, the applicability of paragraphs (a) or (b) above will depend upon the stated purpose for ending the tenancy. Where a landlord has ended a tenancy so that the landlord or close family member may occupy the unit, I find it reasonable to apply paragraph (b), meaning the landlord or close family member of the landlord must occupy the rental unit for at least six months after the tenancy ended to avoid paying compensation under section 51(2).

In this case, a 2 Month Notice in the approved form was not served upon the tenants. During the hearing, both parties provided opposing testimony as to the reason the tenancy ended. The tenant submitted that it ended because the landlord told them they had to move out because he was going to move into the rental unit; whereas, the landlord claimed that the tenants had already decided to move out on their own accord. I find the tenant's version of events to be consistent with the documents signed by both parties on June 28, 2016. The document indicates that the landlord has already given the tenants 2 months' notice to vacate, as seen in the use of words in the past tense "[landlord] has given us 2 month notice..." Further, it is clear to me that the tenants gave 10 days' notice to the landlord in return, as evidenced by the use of words in the current tense: "we [tenants] are officially giving our new landlord 10 days notice". In addition to finding the tenant's testimony to be consistent with the documentary evidence, I also noted that the tenant provided clear and straightforward submissions.

I find the landlord's position that the tenants had already decided to move out for their own reasons and not because of his representations to them to be inconsistent not only with the document he signed on June 28, 2016 but also inconsistent with his actions in paying the tenants compensation to leave on top of accepting notice that is much less than they would have to give as month-to-month tenants. If the landlord was of the view the tenants were ending their tenancy early, causing the landlord to suffer a loss with a vacancy, it does not make sense that he would accept short notice and pay them to leave. Rather, the 10 days' of notice the tenants gave and the landlord paying the tenants compensation is entirely consistent with a situation where a landlord has given a tenant a 2 Month Notice under section 49 of the Act. Further, the landlord had pointed out that the tenant was arguing to him that he had rights and

from what I can see from the June 28, 2016 document those rights are all consistent with a tenant who is acting upon a 2 Month Notice received from the landlord.

In light of the above considerations, I find the tenant to be more credible than the landlord.

Although a 2 Month Notice was not given by the landlord in this case, section 5 of the Act provides as follows:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Considering all of the evidence before me, I am of the view the landlord is trying to avoid requirements of the Act and the landlord's attempt to do so is of no effect, as provided in section 5. Accordingly, I hold the landlord responsible to compensate the tenants as if a *2 Month Notice to End Tenancy for Landlord's Use of Property* in the approved form. Having found the tenant more credible than the landlord, I also accept that the tenants vacated based upon the landlord's representation to them that the landlord would be occupying the rental unit. Therefore, I find that to be the stated purpose the landlord gave for ending the tenancy.

As for the landlord's position that the parties had a settlement agreement that was fulfilled, I find the tenant's explanation as to why the tenants accepted a cheque for less than the sum of amounts indicated on the June 28, 2016 to be reasonable and at the time of taking the payment the tenants had no indication that landlord would not be moving in as he stated. Accordingly, I do not consider the payment to be a settlement of any and all claims related to this tenancy given the misrepresentation on part of the landlord.

As it was undisputed that the landlord gave possession of the rental unit to new tenants in August 2016, I find the landlord did not occupy the rental unit for at least six months after the tenancy ended. Therefore, I find the landlord failed to fulfill the stated purpose for ending the tenancy.

In light of all of the above, I find the tenants entitled to further compensation from the landlord in an amount equivalent to two months of rent payable under their tenancy agreement, which was \$1,900.00 per month, as provided under section 51(2) of the Act. Accordingly, I award the tenants the sum of \$3,800.00 (\$1,900.00 x 2). I further award the tenants recovery of the \$100.00 filing fee pay for this application. A Monetary Order in the total amount of \$3,900.00 is provided to the tenants with this decision to serve and enforce upon the landlord.

Conclusion

The tenants have been provided a Monetary Order in the total amount of \$3,900.00 to serve and enforce upon the landlord.

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 23, 2017

Residential Tenancy Branch