



Dispute Resolution Services

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* ("the Act") for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing. As the landlord confirmed receipt of the tenant's application for dispute resolution including the notice of hearing and 3 pages of evidence, I find that these documents were duly served to the landlords pursuant to sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as a result of an improper end to this tenancy?
Is the tenant entitled to recover her filing fee for this application?

Background and Evidence

This tenancy began on September 15, 2015 and, over the course of this tenancy, the tenant paid \$1500.00 on the first of each month in rent. This tenancy ended on April 15, 2016 after the tenant received a 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice"). The landlord's 2 Month Notice, served to the tenant on March 30, 2016 indicated that "the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant." The 2 Month Notice was effective May 31, 2016. A handwritten notice on the bottom of the notice indicated that the tenant would pay April 2016 rent and that the tenant would pay no rent in May 2016. "May free!" was written in the same area at the bottom of the 2 Month Notice. The handwritten note also indicated that the tenant would be required to provide a 10 Day Notice if she vacates before the end of April 2016.

The tenant testified that she provided her notice to end the tenancy on April 5, 2016 and that she vacated the rental unit on April 15, 2016. Both parties agreed that the tenant paid rent up to April 15, 2016. The tenant testified that, after vacating the rental unit, she became aware that the residential property (including rental unit she had rented) was listed for sale. The tenant submitted a copy of the sale listing of the residential property. The real estate listing showed that the property had been for sale 154 days prior to the tenant's discovery of the advertisement on September 22, 2016. The description of the property for sale read,

Investor and developer alert! Subdividable [sic] property (already passed the permits with the city for 2 lot subdivision)... build 2 dream homes on this large 129' x 89' corner lot (1/4 acre). 3 bedroom rancher in the heart of [City]. Home is in liveable [sic] condition and had new flooring and paint throughout just 2 years ago! Huge shop for storage, or in working Call today this one won't last long!...

The tenant testified that moving out of her rental unit had been a hardship. She testified that her child's school was located very close to her rental unit and, when she moved, she had to commute daily to deliver the child to school. She testified that she was confused as to why she was told she must vacate the residence.

The landlord testified that she "tried to follow the law" in ending the tenancy. She testified that she and her sister owned the property together and each agreed that they owned a half of the property. She testified that it was always her intention to demolish the property, subdivide the land and build her own home on her portion of the property.

The landlord testified that a series of miscommunications had occurred leading to the rental property not being used as described in the 2 Month Notice. The landlord testified that a family member had received notice *only by phone* that the landlord *would likely be* issued a permit for demolition but that, when she issued the notice to end tenancy (March 30, 2016), the permit had actually been issued. According to the testimony of the landlord, the permit was issued several months after the tenant vacated the rental unit.

The landlord also testified that the other owner's husband (her brother in law) placed the whole property on the listing instead of listing only the portion that belonged to his wife. The landlord testified that she didn't realize the difficulties the tenant had with her child's school location and that she could have accommodated her in the rental unit until the end of the school year as the residence had not been sold or demolished during that time. The landlord testified that the property had been demolished as of September 2016 when the landlord got a permit to demolish the property. The landlord did not

submit any photographic or documentary evidence to confirm that the property had now been demolished.

As a result of learning of the landlords' attempts to sell the property and not demolish the property, the tenant filed an application seeking compensation on October 5, 2016. The tenant filed an application pursuant to section 51 of the Act arguing that the landlords have not used the rental unit for the purposed described in her notice to end tenancy.

The landlord testified that she had good intentions to meet the terms of the 2 Month Notice. She argued that the tenant was not entitled to compensation because she vacated the rental unit as a result of her own 10 Day Notice to End Tenancy. The landlord testified that the property was demolished in September 2016: the landlord was unable to recall the date that the property was demolished or any other salient details related to the tear down of the property.

Analysis

Section 49 of the Act allows the end of a tenancy for landlord's use including when the property is to be demolished or extensively repaired. The tenant relies on section 51 of the Act that provides an outline for addressing a 2 Month Notice to End Tenancy for Landlord's Use after the tenant before and after the tenancy has ended. After the tenancy ends as a result of a 2 Month Notice, the following provisions of section 51(2) take effect:

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 tenant provided a printout of the residential premises real estate listing as evidence that she is entitled to double her monthly rent (\$1500.00 per month) pursuant to section 51(2). The listing included the residential property/rental unit address, a write-up indicating that the home is livable and recently renovated as well as the substantial

number of days that the unit had been listed (154). Given that the tenant discovered the listing in September 2016, the rental unit/ residential property was listed for sale prior to the issuance of the landlord's 2 Month Notice to End the Tenancy.

The tenant testified that she believes the landlords issued a 2 Month Notice to End Tenancy to improve the unit for sale of the property. I find that the tenant testified candidly with respect to the discussions at the end of the tenancy, her decision to vacate the rental unit and the reasons given by the landlord that required her to vacate the residence. She also provided testimony with respect to the difficulties in moving during the school year.

The landlord submitted that their 2 Month Notice to End Tenancy was issued in good faith. However, this is not the standard that the landlord is required to meet in these circumstances. The landlord is required to comply with both section 49 and section 51 which provides further requirements of a landlord with respect to the issuance of a 2 Month Notice to End Tenancy: a landlord is required to use or take steps to use the property as intended in the 2 Month Notice within a reasonable period of time.

I find that the landlords were not credible in their assertion that they had ultimately complied with the 2 Month Notice. The landlord issued the 2 Month Notice to the tenant when the property was already listed for sale. The landlord testified that the rental unit has been demolished but provided insufficient evidence to support this claim. I do not accept the testimony provided by the landlord as she should have known that the property was for sale and provided information to the tenant accordingly.

I accept the tenant's evidence that the rental unit was up for sale at the time of the landlords' issuance of the 2 Month Notice. I accept the tenant's argument that the landlords did not take steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice (May 31, 2016).

I note that the landlord was unable to provide an exact date that the demolition took place or sufficient evidence to substantiate and support the claim that the property has been demolished. I note that the landlords provided several reasons why her and her sister/co-owner deviated from the conditions of the notice to end tenancy based mainly on miscommunications between the owners of the property. The consequences of this miscommunication are not the tenant's consequences to bear. I find the landlord failed to provide sufficient evidence to counter the tenant's proposition that they did not demolish the residence in accordance with their notice to end tenancy. Therefore, I find the tenant has provided sufficient evidence to prove that she is entitled to the equivalent of double the monthly rent payable under the tenancy agreement pursuant to section 51(2).

The landlords also argued that the tenant is not entitled to this award as she vacated the unit as a result of her own notice, and still received the benefits of the 2 Month Notice. I rely on section 50 of the Act in considering the landlord's argument. Section 50 states,

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] ..., the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

...(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

(emphasis added)

The unchallenged evidence of the tenant at this hearing was that; she provided 10 days' notice on April 5, 2016; she vacated the rental unit on April 15, 2016; she paid rent for half of April 2016; she received no other compensation from the landlord. I find that the tenant gave the landlord 10 Days' notice in accordance with section 50 of the Act.

As the tenant made an application pursuant to section 51 of the Act, I consider both provisions under that section. I have found that the tenant is entitled to 2 months' rent in compensation for the landlord's failure to act in accordance with the 2 Month Notice pursuant to section 51(2)(a). I find that the tenant is also entitled to compensation pursuant to section 51(1) and section 51(1.2).

51 (1) A tenant who receives a notice to end a tenancy 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.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

I find that the tenant gave notice to vacate the rental unit before she withheld the amount equivalent of one month's rent payable under the tenancy agreement. The effective date of the 2 Month Notice was May 31, 2016. The tenant paid rent for the half month of April 2016 that she continued to reside in the rental unit. The tenant has not yet been compensated pursuant to section 51(1) as a result of the landlord's issuance of a 2 Month Notice to End Tenancy. As the tenant has not received compensation for the equivalent of one months' rent, I find that she is entitled to recover \$1500.00 in compensation.

In accordance with section 50(3) of the Act, the tenant's right to compensation pursuant to section 51 is not extinguished by her choice to vacate the rental unit prior to the effective date of the notice to end tenancy. Therefore, I find that the tenant is entitled to recover the equivalent of 3 months' rent totalling \$4500.00 from the landlord. This amount is comprised of \$1,500.00 pursuant to section 51(1) of the Act and \$3,000.00 pursuant to section 51(2) of the Act.

As the tenant was successful in her application, she is entitled to recover her \$100.00 filing fee.

Conclusion

I grant a monetary order in favour of the tenant in the amount of \$4600.00.

The tenant is provided with this 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 these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 13, 2017

Residential Tenancy Branch