



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDC, OLC, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "female tenant" did not attend this hearing, which lasted approximately 22 minutes. The male tenant ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that he had authority to speak on behalf of the female tenant at this hearing (collectively "tenants").

The landlord called in two minutes late to the conference at 11:02 a.m. when the conference began with me and the tenant present at 11:00 a.m., but I informed the landlord what occurred in his absence.

Preliminary Issue - Service of Documents and Previous Hearings

This matter was previously heard by a different Arbitrator on July 6, 2017 and a decision was issued on the same date ("second hearing" and "second decision"). Only the landlord attended the second hearing; the two tenants did not. The tenants applied for a review of the second decision on the basis of being unable to attend the hearing. A new review hearing was granted by another Arbitrator, pursuant to a review consideration decision, dated July 24, 2017.

By way of the review consideration decision, the tenants were required to serve the landlord with a copy of the review consideration decision, the notice of review hearing and the written evidence that they submitted with their review application. The landlord confirmed receipt of the above documents, with the exception of the tenants' written

evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the review consideration decision and the notice of review hearing. The tenant said that he did not wish to rely on the written evidence submitted with the tenants' review application, which consisted of a one-page hospital medical record, so I did not consider it at this hearing or in my decision.

The landlord confirmed receipt of the tenants' original application for dispute resolution 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 tenants' original application and the tenants were duly served with the landlord's written evidence package.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated June 24, 2016 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 2 Month Notice.

Since the tenancy is over and the tenants did not provide any evidence regarding the claims for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement or other unspecified remedies, I dismiss these portions of their application without leave to reapply.

The tenants initially applied for a monetary order of double the monthly rent of \$945.00, totalling \$1,890.00, but the landlord confirmed that the rent was actually \$948.00 during the tenancy. Pursuant to section 64(3)(c) of the *Act*, I amended the tenants' application to increase the monetary claim and the landlord consented to this amendment.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants 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, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2015 and ended on September 20, 2016. Monthly rent of \$948.00 was payable on the first day of

each month. A security deposit of \$462.00 was paid by the tenants and the landlord returned it to the tenants. A written tenancy agreement was signed by both parties.

Both parties agreed to the following facts. The parties attended a previous hearing on August 17, 2016, after which a decision of the same date was issued by a different Arbitrator ("first hearing" and "first decision"). The file number for the first hearing appears on the front page of this decision. The first hearing recorded a settlement between the parties for the tenants to vacate the rental unit by October 31, 2016, the tenants receiving one month's free rent pursuant to the 2 Month Notice and the tenants' entitlement to vacate earlier than October 31, 2016, provided that they give five days' notice to the landlord with no rent payable after vacating. Both parties abided by the above settlement, since the tenants vacated on September 20, 2016 with at least five days' notice to the landlord, and the landlord returned the tenants' one month's rent compensation, security deposit and ten days of rent from September 20 to 30, 2017, to the tenants.

The tenants seek compensation under section 51(2) of the *Act* for double the monthly rent of \$948.00, totalling \$1,896.00, plus recovery of the \$100.00 application filing fee. The tenant claimed that because the landlord has not used the rental unit for the stated purpose on the 2 Month Notice, the tenants are entitled to compensation.

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 his mother-in-law moved into the rental unit after the tenants vacated. He provided a copy of the written tenancy agreement which indicates a tenancy for his mother-in-law to reside in the unit from September 23, 2016, until August 31, 2017, after which it continues month-to-month or for another fixed length of time. He stated that his accountant advised him to issue a tenancy agreement for financial purposes so that it appears all people in the same building are tenants. He explained that his mother-in-law pays \$900.00 for rent each month and she paid a security deposit of \$450.00 but all of this money is given back to her so she does not actually pay out of pocket.

The tenant said that he moved to a new unit close to the rental unit. He stated that he walks by the rental unit almost daily. He claimed that no one has been living there since

he vacated, the landlord only attends to do some repairs occasionally. The tenants provided two photographs of the curtains closed at the rental unit window. The tenant maintained that he talked to other tenants in the same building who told him that no one was living in the rental unit.

Analysis

Subsection 49(3) of the Act states that a landlord may end a tenancy in respect of a rental unit where 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 tenants are 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.

I make the following findings, on a balance of probabilities, based on the testimony and written evidence of both parties. The tenants vacated the rental unit on September 20, 2016, pursuant to the 2 Month Notice and the parties' agreement at the first hearing on August 17, 2016. The landlord's mother-in-law moved into the rental unit on September 23, 2016 and she continues to live there. The landlord provided a written tenancy agreement to confirm same; although the agreement indicates the wrong street address, I accept the landlord's explanation that this was simply a typographical error. Whether his mother-in-law pays rent or not, she still occupies the rental unit as a close family member parent of the landlord's spouse, as required by section 49(3) of the Act.

The tenant speculates that no one is living in the rental unit but he does not know for sure; he has not attempted to knock at the door or talk to anyone inside the rental unit to confirm. The tenant said that he received information from other tenants in the building but they did not provide witness statements or verbal testimony at this hearing, to

support the tenant's version of events. The tenants' photographs of the curtains closed at the rental unit window and his allegations that the landlord uses timed lights to make it appear that someone is living there were not only denied by the landlord but are unfounded. It is the applicant's burden of proof to show that the landlord failed to use the rental unit for the purpose in the 2 Month Notice; I find that the tenants have failed to meet this burden.

I find that the landlord established that the rental unit was used for the purpose as stated on the 2 Month Notice. Therefore, I find that the tenants are not entitled to compensation of double the monthly rent under section 51(2)(b) of the *Act*.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

In accordance with section 82(3) of the *Act*, I confirm the second decision issued by the Arbitrator on July 6, 2017, at the second hearing insofar as it dismisses the tenants' entire application. This review hearing decision is to be read together with the second decision, dated July 6, 2017.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

The second decision, dated July 6, 2017, insofar as it dismisses the tenants' entire application, is confirmed.

This review hearing decision is to be read together with the second decision, dated July 6, 2017.

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: August 31, 2017

Residential Tenancy Branch