



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC 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 loss or money owed under the *Act* pursuant to section 67; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and three other evidentiary materials submitted.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss or money owed?

Is the tenant entitled to an order requiring the landlord to comply with the *Act* by acting on the grounds provided in the 2 Month Notice to End Tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began in April 2003 as a 12 month fixed term tenancy and continued as a month to month tenancy. Before the end of the tenancy, the tenant paid \$2600.00 for monthly rent on the 1st of each month. On March 31, 2015, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use to the tenant. The landlord relied on the grounds that the landlord had all permits required for sale and that the purchaser required the premises to be vacant. The tenant vacated the rental unit on May 31, 2015 in accordance with the 2 Month Notice. At that time, the tenant was provided with her

\$1350.00 security deposit as well as 1 months' compensation in the amount of \$2600.00 in compliance with section 51 of the Act.

The tenant has applied pursuant to section 51(2) requiring a tenant to be compensated in the equivalent amount of 2 month's rent when a landlord fails to take steps to act in accordance with the purpose of the 2 Month Notice to End Tenancy. The tenant testified that she attended the residence on 2 occasions to check her mail and, on each occasion, there were tenants residing in the rental unit. She testified that on each occasion, she spoke to the people occupying her former rental unit and they informed her that they were renters on the premises. On one of those occasions, she testified that the landlord was residing in the unit on the other side of the duplex.

The landlord/purchaser confirmed that he resided in one half of the residential premises and that he rents the other side. He testified that he always intended to occupy just one side of the duplex with his family. He testified that there were a multitude of outstanding repair orders to address with respect to the property before anyone could live in the rental unit. He submitted copies of all the orders from his municipality to show that he was required to undergo extensive renovations.

The landlord testified that he was not aware that the tenant had been provided with a 2 Month Notice. The landlord testified that, while he would have issued a 2 Month Notice, he would have done so to indicate the extensive repairs needed for the rental unit. However, he acknowledged that he has now reviewed the 2 Month Notice provided to the tenant by the previous landlord. He acknowledged that the 2 Month Notice indicated that he intended to live in the unit and therefore required the unit to be vacant. He testified that he was not aware of the issuance of the notice or the rules with respect to such notices.

The tenant's counsel submitted that the landlord's ignorance of certain transactions as well as the requirements of the Act does negate the landlord's obligation under section 51 of the Act. The tenant's counsel submitted that the landlord knew or ought to have known that the tenant had been asked to vacate so that he could reside in the rental unit.

Analysis

Section 49 and 51 of the Act address compensation to a tenant as the result of a 2 Month Notice for Landlord's Use.

49 (5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit...

Section 49 of the Act allows the end of a tenancy for landlord's use including when the property is sold and will be occupied by a close family member of the purchaser. 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.

As a result of the issuance of a 2 Month Notice, particularly with respect to sale of the residential property, both the original landlord and the purchaser are subject to the requirements of these sections of the Act.

The tenant provided a copy of the 2 Month Notice issued to her on March 31, 2017 as well as her tenancy agreement signed with the original landlord as evidence. The landlord/purchaser did not dispute the evidence of the tenant that he now resides in the unit. The landlord/purchaser also did not dispute that he has a new tenant residing in the unit that used to be the tenant's rental unit.

The landlord/purchaser testified that he has met the requirements of the notice to end tenancy in that he now resides in the unit. The tenant and her agent argue that she is entitled to double her monthly rent (\$2600.00 per month x 2 = \$5200.00) pursuant to section 51(2). The tenant's agent submits that, regardless of the current landlord/purchaser's knowledge of the 2 Month Notice to End Tenancy, he is responsible to the tenant to compensate her.

The landlord submitted that he was not aware of the 2 Month Notice to End Tenancy issued or the tenant's plight as she vacated the rental unit prior to his taking possession of the unit. However, given the length of this tenancy, the tenant or her belongings would have been present during any viewing of the residential premises prior to purchase. Furthermore, the landlord testified that he was not party to the provision of the notice to end tenancy. The Act states that the landlords (both original landlord/seller and landlord/purchaser) are required to meet their obligations pursuant to section 49 to 51 of the Act.: the 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.

Regardless of the landlord's credibility or his exact knowledge of the end of the tenancy, I find that landlord/purchaser is required to comply with the 2 Month Notice. The landlord bears the burden of proof in these circumstances and I find that he was unable to provide sufficient evidence to counter the tenant's proposition that he ought to have moved into her rental unit and/or used the entirety of the premises for his own purposes. The landlord *should have known* that the tenant resided in the unit prior to his purchase of the premises, that she was given a 2 Month Notice and that she was entitled to rely on the legislation relevant to that notice.

Based on all of the evidence before me, I accept the tenant's evidence that landlord has not taken steps to use the property as intended in the 2 Month Notice within a reasonable period of time. 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).

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. The tenant is entitled to \$5200.00 (the equivalent of 2 months' rent).

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 \$5300.00.

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 with this Order, with 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: September 12, 2017

Residential Tenancy Branch