



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the tenant’s application for compensation for loss or damage under the Act, regulation, or tenancy agreement, and recovery of the application filing fee.

The tenant’s application also indicated that she sought an order cancelling a 2 Month Notice to End Tenancy for Landlord’s Use but the tenant advised at the hearing that she had checked that box in error. At the outset of the hearing the tenant also withdrew her request for recovery of the application filing fee, on the basis that the fee had been waived.

Both the landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present documentary evidence, to make submissions, and to respond to the submissions of the other party.

Service of the tenant’s application and notice of hearing was not at issue. The tenant said that she had not received the landlord’s evidence, which the landlord testified that she sent by regular mail. The landlord was advised that regular mail is not an acceptable method of service. The tenant agreed with the contents of the landlord’s two pages of evidence, which simply documented the tenant’s receipt of her security deposit and her move out date of October 1, 2017.

Issues to be Decided

Is the tenant entitled to compensation?

Background and Evidence

There was no written tenancy agreement in evidence. It was agreed that this tenancy began in or about 2009 with another landlord, and that rent was \$900.00 monthly,

payable on the first of the month. A security deposit of \$500.00 was paid by the tenant at the beginning of the tenancy and has since been refunded.

It was also agreed that the respondent landlord bought the rental property in or about December of 2015 and took possession in February of 2016. It was further agreed that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") in or about August of 2016 and that the 2 Month Notice had an effective date of October 31, 2017.

The 2 Month Notice was issued for the following reasons: (1) the landlord had all necessary permit and approvals required by law and intended to renovate or repair the unit in a manner that requires the unit to be vacant; and (2) the landlord intended to have her close family members occupy the rental unit.

The tenant testified that she applied to dispute the 2 Month Notice but, as the hearing was scheduled only one week in advance of the effective date, she instead secured new housing, and vacated the rental unit in question on or about October 1, 2016. The tenant stated that her new rental costs \$300.00 more per month than her prior rental.

It was also agreed that the landlord refunded the tenant one month's rent as required by s. 51(1) of the Act, less \$200.00. The landlord said that the tenant had agreed to the landlord's retaining this \$200.00. The tenant disagreed.

The tenant testified that after she purchased the rental property the landlord advised that she would like to collect a substantially higher rent, but the tenant would not agree to an increase. The landlord then asked the tenant if she would agree to rent the basement suite as well as the upper suite. The tenant did not want to do so.

The tenant further said that the basement suite was not habitable, but that before she received the 2 Month Notice from the landlord, the landlord was showing the home to prospective renters who were willing to rent both of the suites.

The tenant also testified that she did not believe that substantial renovations were actually done, and that when she went by the rental property in April of this year there was a "sold" sign on it and new tenants living there.

The landlord testified that when she bought the rental property she did not want the tenant to continue to reside there, and told the seller as much, but that the tenant then asked the landlord to allow her to remain until her son finished the school year. The

landlord agreed, but did not document the agreement. The landlord also testified that she chose not to have the seller give the tenant notice because it was Christmas.

The landlord further testified that she had wanted her parents to move into the rental unit, but that “two or three months later” her mother became ill and could not relocate. Renovations in the rental property took place slowly after the applicant tenant vacated in October of 2016, while the rental unit was empty. The landlord described the renovations as painting, changing out windows, and replacing the stove, refrigerator, and blinds.

The landlord also said that the rental property was back on the market from May of 2016 (while the application tenant was still residing there) until it was sold in 2017.

The tenant said that she understood that the landlord re-listed the property after receiving a report suggesting that the mold levels in the home were high, which report the landlord had not been able to secure before the closing date of her purchase of the property.

Analysis

Section 49 of the Act allows a landlord to end a tenancy with 2 months’ notice in certain circumstances. This landlord had ended the tenancy under s. 49 on the basis that renovations so substantial that they require the unit to be vacant will be undertaken and on the basis that a close family member will be occupying the space.

Section 51(1) of the Act requires the landlord to compensate a tenant who has received a 2 Month Notice in the amount of one month’s rent. Here, the landlord has refunded one month’s rent, less \$200.00. The landlord says that the tenant agreed to the deduction of \$200.00 but the tenant says that she did not agree.

The landlord did not describe the agreement or offer any written documentation of the agreement. The landlord has therefore not established on a balance of probabilities any reason the tenant should not have received the whole amount owing. I therefore award the tenant the \$200.00.

Section 51(2) of the Act states that 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,” then the landlord must pay the tenant double the monthly rent.

I find that the renovations described by the landlord were not significant enough to require the unit to be vacant while they took place. Accordingly, the “stated purpose” for ending the tenancy (substantial renovations requiring vacancy) has not actually taken place.

The landlord has acknowledged that her family members did not move in and that the rental property has now been sold. It does not matter under the language of the Act whether the family members did not move in because this was never actually intended or because of an unforeseen illness. As a result, I find that the rental unit has not been used for the stated purpose for at least 6 months after the end of the applicant’s tenancy.

Based on the above, I find that the landlord must pay the tenant \$1,800.00, or double the monthly rent.

Conclusion

The tenant’s application is successful. I issue a monetary order for the tenant for **\$2,000.00.**

The landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, it 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 Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: September 08, 2017

Residential Tenancy Branch