



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for the issuance of an "illegal notice to end tenancy" and/or for not using the rental unit for the stated purpose after ending the tenancy for personal use, pursuant to Sections 49, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in March 2014 on a one year fixed term that converted to a month to month tenancy in April 2015 for a monthly rent due on the 1st of each month in the amount of \$600.00. They also agreed the tenant had paid a security deposit of \$287.50 and the tenancy ended in April 2017.

The parties agreed the landlord issued the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant submitted a copy of this notice that is dated January 25, 2017 with an effective vacancy date of March 30, 2017 citing the rental unit will be occupied by the landlord or the landlord's close family member.

The parties also agreed that by February 28, 2017 the landlord had advised the tenant that his plans had changed and he no longer needed the rental unit for use by a family member.

The landlord submitted that at that time he advised the tenant that the tenancy no longer had to end and that she could continue to stay in the rental unit. The tenant testified that while this occurred the landlord also insisted on a new tenancy agreement including a rent increase of \$150.00 or 25%. The landlord testified that no such

demand was ever made to the tenant in regard to staying in the unit after this notice was issued.

The tenant submitted that she did not submit an Application for Dispute Resolution seeking to cancel the notice because of recent issues with the landlord she had decided that she would be considering ending the tenancy anyway and that she would just move out in accordance with this Notice. She also testified that by the time the landlord informed her that he no longer needed the unit the date to file an Application to dispute the Notice had long passed.

The landlord submitted that as a result of the change in his plans the rental unit remained empty until August 2017 when he rented it to new tenants.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(8) states a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

Section 49(9) goes on to say that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Section 51(1) of the *Act* states a tenant who receives a notice to end a tenancy under Section 49 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.

Section 51(2) states that in addition, if 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 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.

Residential Tenancy Policy Guideline 11 states:

“A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be

waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.”

From the submissions of both parties and regardless of the reasons why I find that the parties did not come to any agreement to cancel the 2 Month Notice to End Tenancy. As such, I find that the Notice was effective and both parties remained responsible for their respective obligations that flowed from this Notice.

For the purposes of clarity, this means that the tenant was obligated to vacate the rental unit in accordance with the Notice, which she did. Further the landlord was obligated to provide compensation as outlined in Section 51(1) and 51(2), if applicable.

From the landlord’s submissions I accept the rental unit was left vacant from when the tenant vacated it at the beginning of April 2017 until the landlord re-rented the unit to new tenants effective the beginning of August, 2017 or for a period of 4 months.

While I can find that while the rental unit remained vacant for that period it, in essence, was occupied by the landlord. However, since it was vacant for only 4 months and not the required 6 months before it was re-rented to new tenants, I find the landlord has not used the rental unit for the stated purpose for at least 6 months and the tenant is entitled the compensation in an amount that is double the monthly rent, pursuant to Section 51(2).

Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,200.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 08, 2017

Residential Tenancy Branch