



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

On April 13, 2017, the Tenant submitted an Application for Dispute Resolution asking; for a monetary order for money owed or compensation for damage or loss under the Act, the regulation, or the tenancy agreement, and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Tenant and Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed they exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Landlord testified that he issued a 2 Month Notice To End Tenancy For Landlord's Use Of Property; however, neither party provided a copy of the Notice. The Landlord stated that he would send a copy of the 2 Month Notice via fax after the hearing. A copy of a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated January 31, 2017 was received via fax after the hearing.

Issues to be Decided

- Is the Tenant entitled to compensation from the Landlord?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Both parties testified that the tenancy began on October 1, 2016, as a month to month tenancy. The parties testified that rent in the amount of \$1,815.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$850.00.

The Tenant is claiming compensation in the amount of \$3,630.00 which is double the amount of the monthly rent that the Tenant was paying the Landlord.

The Tenant testified that the Landlord ended the tenancy by issuing a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated January 31, 2017.

The Tenant testified that the Landlord initially informed her via email that he wanted to move into the rental unit. The Tenant testified that she informed the Landlord that the Landlord is required to give her proper notice and compensate her in the amount of one month's rent.

The Landlord responded with another email containing an attachment containing a 2 Month Notice To End Tenancy For Landlord's Use Of Property. The Tenant provided a copy of the email.

The Tenant testified that a couple of weeks later, the Landlord sent another email stating that the Landlord cannot move in and he offered to let the Tenant remain in the unit.

The Tenant testified that she had already made other arrangements, and had paid deposits to move, so she did not accept the Landlord's invitation to stay in the rental unit. The Tenant testified that she moved out of the rental unit on April 1, 2017.

The Tenant testified that the Landlord rented the unit out to a new Tenant on April 1, 2017. The Tenant is seeking compensation in the amount of \$3,630.00.

In response, the Landlord confirmed that he notified the Tenant that he was moving into the rental unit. The Landlord testified that a 2 Month Notice To End Tenancy For Landlord's Use Of Property was sent to the Tenant as an email attachment.

The Landlord testified that their plans to move into the rental unit changed and they offered the Tenant an opportunity to remain in the unit. When the Tenant decided to move out the Landlord re-rented the unit to a new tenant.

Analysis

The Residential Tenancy Branch Policy Guideline #11 Amendment and Withdrawal of Notices is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

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.

Section 51 (1) of the Act states that 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.

Section 51 (2) of the Act states that 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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated January 31, 2017, from the Landlord. The Tenant accepted the 2 Month Notice and moved out of the rental unit.

The Tenant did not agree with the Landlord's offer to withdraw the 2 Month Notice. The Tenant had already made arrangements to move and is not obligated to allow the Landlord to withdraw the 2 Month Notice.

I find that the Landlord failed to use the rental unit for his own use for a six month period, and the Landlord re-rented the unit to a new Tenant in April 2017.

I find that the Landlord breached section 49 of the Act by not using the unit for the stated purpose, and the Landlord must pay the Tenant two months' rent as compensation.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$3,730.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

I find that the Landlord breached section 49 of the Act by not using the unit for the stated purpose within the Notice, and the Landlord must pay the Tenant two months' rent as compensation.

I grant the Tenant a monetary order in the amount of \$3,730.00. This monetary order may be filed in 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 22, 2017

Residential Tenancy Branch