



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYALTY GROUP REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for monetary compensation payable to tenants under section 51(2) of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explored service of hearing documents and evidence upon each other and the Residential Tenancy Branch. The tenant named two landlords in filing this Application for Dispute Resolution and I confirmed that each named landlord was served with a hearing package, including evidence, by registered mail sent on May 25, 2017.

The landlord's agent stated that he created a Landlord's Application for Dispute Resolution in an effort to upload the landlord's evidence in response to this claim but not to make a claim against the tenant. The landlord's evidence was uploaded October 18, 2017; however, the landlord's did not send the evidence to the tenant until a couple of hours before this hearing. The landlord acknowledged that he was aware of the time limit for serving evidence and explained that he had been on vacation the first week of October 2017 and was busy upon his return. The landlord did not provide a reason for not serving evidence before going on vacation despite receiving the tenant's Application for Dispute Resolution several months prior. The tenant stated that he had not had the opportunity to review the landlord's evidence. I informed the landlord's agent that service of the landlord's documentary evidence was inadequate and did not comply with the Rules of Procedure. In these circumstances, I informed the landlord that I would not admit the landlord's late evidence or consider an adjournment; however, the landlord would be permitted the full opportunity to provide the landlord's position orally during the hearing.

The tenant's Application for Dispute Resolution was amended to exclude the name of tenant's wife who was not a tenant under the tenancy agreement.

All parties were affirmed and the hearing proceeding. The hearing process was explained to the parties and the parties were given the opportunity to ask questions.

Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to two month's rent under section 51(2) of the Act?

Background and Evidence

The six month fixed term tenancy started on August 1, 2016 and was to continue on a month to month basis upon expiry of the fixed term. The tenant was required to pay rent of \$1,950.00 on the first day of every month.

The landlord's agent served the tenant with a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") on January 31, 2017 with a stated effective date of March 31, 2017. The tenant vacated the rental unit on April 1, 2017 with consent from the landlord for the extra day of occupancy.

The stated reason for ending the tenancy, as indicated on the 2 Month 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).*"

As the tenancy was nearing an end, the landlord's agent advertised the rental unit for rent starting April 1, 2017 at the monthly rate of \$2,200.00. In an email dated March 24, 2017 the landlord offered to enter into a new tenancy agreement with the tenant for an increased amount of rent; however, the tenant had already entered into a new tenancy agreement set to commence on April 1, 2017. The tenant considered the offer but was not agreeable to the increased rent and the landlord was not agreeable to compensating the tenant for costs to break his new tenancy agreement so the parties did not reach an agreement with respect to continuing the tenancy.

Shortly after the tenancy ended the rental unit was listed for sale and the property sold to new owners effective May 30, 2017.

The tenant submitted that he had been informed that his tenancy was ending so that the owner could move into the rental unit and the tenant proceeded to find new living accommodation so the owner could move in. However, the owner or owner's close family member did not move in. Rather, there was an attempt to re-rent the unit for a greater amount before selling the unit shortly after the tenancy ended. The tenant questioned the landlord's good faith intention in issuing the 2 Month Notice; however, I did not permit further submissions on that point since the landlord's good faith intention is only relevant if the 2 Month Notice is disputed. I informed the parties that the relevant issue to determine in this proceeding is whether the rental unit was used for the purpose stated on the 2 Month Notice.

The owner's son (referred to as AM in this decision) testified that he and his wife intended to move into the rental unit when the 2 Month Notice was issued. However, the owner's mother became ill in December 2016 and the owner went to aid his mother in another country which caused the owner to suffer financial difficulties. To assist his father financially, AM decided to live in the basement suite at his father's home instead of moving into the rental unit. At that point it was decided that they would try to re-rent the rental unit and the landlord's agent was asked to list the rental unit for rent; however, due to serious financial difficulties being experienced by the owner it was decided that the rental unit should be sold and the landlord's agent was asked to list the property for sale and it was sold effective May 30, 2017. The landlord submitted that the tenant was already compensated one month of rent for receiving the 2 Month Notice, and refunded the security deposit, and extenuating circumstances caused the landlord's plans to change.

Analysis

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. First of which is compensation for receiving the 2 Month Notice provided under section 51(1) and this compensation is equivalent to one month's rent. Secondly, compensation is also payable to the tenant under section 51(2), in addition to compensation payable under section 51(1), where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice. Compensation under section 51(2) is intended to dissuade landlords from issuing a 2 Month Notice to end a tenancy by indicating a permissible reason for ending the tenancy and then actually using it for another purpose.

In this case, the tenant has received compensation under section 51(1) of the Act and the tenant is seeking compensation pursuant to section 51(2) of the Act.

Section 51(2) provides:

(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...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis underlined>

Section 49 provides for a variety of reasons a landlord may end a tenancy for landlord's use of property. Accordingly, I find the application of either paragraph (a) or (b) of section 51(2) depends on the reason given for ending the tenancy. To illustrate my reason for this finding, a landlord may end a tenancy for landlord's use where the unit is to be demolished and in such cases paragraph (b) would not apply and paragraph (a) would be most applicable.

In this case, the landlord indicated the reason for ending the tenancy was so that the owner, or owner's close family member, could occupy the rental unit. Accordingly, I find the application of paragraph (b) is the most appropriate, meaning the landlord or the landlord's close family member would have to occupy the rental unit for at least six months starting April 1, 2017 to avoid paying the tenant additional compensation under section 51(2).

Since the landlord sold the rental unit effective May 30, 2017 the landlord, or the landlord's close family member did not occupy the rental unit for at least six months after the tenancy ended. Therefore, I find section 51(2) applies and the landlord must now pay the tenant compensation equivalent of two months' rent, or \$3,900.00.

As for the landlord's submission that the owner's son had an intention to occupy the rental unit but that personal and financial circumstances caused the owner to change his plans for the rental unit, the Act does not provide any exemption to the compensation provision of section 51. Accordingly, the reasons for the landlord's change of plans have no bearing on whether the tenant is entitled to the compensation he seeks in the circumstances before me and I am bound to uphold the legislation as it is written. The landlord may have avoided paying the tenant this compensation had the landlord and tenant mutually agreed to withdrawal of the 2 Month Notice, which may have included paying the tenant compensation for breaking his new tenancy agreement so as to gain the tenant's agreement for withdrawal. However, the parties could not reach an agreement to withdrawal the 2 Month Notice so the tenancy ended pursuant to the 2 Month Notice issued and the landlord remained obligated to fulfill the stated reason for ending the tenancy, or pay the tenant additional compensation under section 51(2).

Given the tenant's success in this Application for Dispute Resolution, I further award the tenant recovery of the \$100.00 filing fee paid by the tenant.

In light of all of the above, I provide a Monetary Order to the tenant in the total amount of \$4,000.00 to serve upon the landlords and enforce as necessary. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an order of the court.

The Monetary Order issued in this case is against the agents who acted as the landlord on behalf of the owner for this tenancy. While I appreciate the agents were acting upon the instructions of the owner, it remains upon the agents to satisfy the Monetary Order with the

tenant and up to the agents to pursue the owner to recover the agents' losses in the appropriate forum.

Conclusion

The tenant is provided a Monetary Order in the sum of \$4,000.00 to serve and enforce upon the named landlords.

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: November 08, 2017

Residential Tenancy Branch