



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNL MNDC OLC FF O

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- more time to make an application to cancel the landlord's 2 Month Notice pursuant to section 66;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement 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 evidence and to make submissions.

The landlord confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

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The tenant testified during the hearing that he had moved out on July 31, 2017 pursuant to the 2 Month Notice to End Tenancy for Landlord Use ('2 Month Notice') served to him by the landlord on March 23, 2017. In his application, the tenant is seeking financial compensation for the landlord's noncompliance with the *Act*, and for recovery of the filing fee. As the tenancy has now ended, the tenant's application to cancel the 2 Month Notice, for more time to make the application, and for the landlord to comply with the *Act*, Regulation, and tenancy agreement are cancelled.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

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

Background and Evidence

This month-to-month tenancy started on April 1, 2012. Monthly rent was set at \$1,595.00 per month, payable in advance on the first of each month. The landlord in this dispute is the new owner of the property, who took possession in June of 2017 from the old landlord, after the tenant had moved out on May 31, 2017.

The tenant moved out as per a 2 Month Notice issued to him by the landlord on March 27, 2017. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a closer family member intends in good faith to occupy the rental unit". A copy was included as part of the tenant's evidence.

The tenant is seeking compensation as he believes the new owner had no intention to occupy the unit as the landlord stated on the 2 Month Notice. On June 12, 2017 the tenant noticed an online advertisement for the rental unit. The new owner does not dispute that this was in fact the same rental unit, but testified that this advertisement was placed by her agent, and was unaware of this advertisement until she had received the tenant's application for dispute resolution. She testified that she had tried to reach her agent without success, and that she was unaware of the agent's actions. The landlord testified that she is in fact residing in the rental unit, and moved in on July 1, 2017 after performing some repairs.

The landlord provided photos for this hearing to support that she is living in the rental unit.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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.

I have considered the evidence and testimony of both parties. It was undisputed by the landlord that there was in fact an advertisement placed for the rental unit soon after the tenant had moved out. The landlord testified that she was unaware of this, as it was placed by her real estate agent. The landlord provided photographs of the apartment, herself, and her family members to support that she had moved in on July 1, 2017.

Although the landlord testified that she was unaware of why her agent had placed the advertisement, I find that the advertisement supports the tenant's claim that the new owner had intentions to utilize the rental unit for other reasons than the one stated on the 2 Month Notice given to him in March of 2017. I find that the photographs and testimony alone is not sufficient to support that the respondent had in fact moved in and is now occupying the rental unit.

Based on a balance of probabilities, I find that the tenant has demonstrated that he is entitled to a monetary Order of double their monthly rent pursuant to section 51(2) of the *Act* because the landlord has not used the rental unit for the stated purpose in the landlord's 2 Month Notice. Based on the evidence before me, I am not satisfied that the respondent had in fact moved into the rental property, or that was the intention when the 2 Month Notice was issued to the tenant.

For the reasons outlined above, I find that the tenant is entitled to compensation as set out in section 51(2) of the *Act*. I therefore find that the tenant is entitled to the recovery of the equivalent of two months rent. As the normal monthly rent was set at \$1,595.00, I find that the tenants are entitled to a monetary Order in the sum of \$3,190.00 as claimed.

As the tenant was successful in his application I find that he is entitled to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$3,290.00 for the landlord's failure to comply with section 49 of the *Act*, and for recovery of the \$100.00 filing fee for this application.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 24, 2018

Residential Tenancy Branch