



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent and the two tenants, "male tenant" and female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord did not testify at this hearing. The landlord's agent confirmed that she had permission to represent the landlord at this hearing. The tenant confirmed that she had permission to represent the male tenant at this hearing. This hearing lasted approximately 77 minutes in order to allow both parties to fully present their submissions.

The landlord's agent confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's written evidence package.

At the outset of the hearing, the tenants confirmed that they did not require any other remedies in this application. Therefore, this portion of their application is dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 15, 2015 and ended on May 14, 2017. Monthly rent of \$1,130.00 was payable on the first day of each month. A security deposit of \$550.00 was paid by the tenants and \$200.00 was retained by the landlord while \$350.00 was returned to the tenants. A written tenancy agreement was signed by both parties.

The tenants seek compensation under section 51(2) of the *Act* for double the monthly rent of \$1,130.00, totalling \$2,260.00, plus recovery of the \$100.00 application filing fee. The tenants stated that because the landlord did not use the rental unit for the stated purpose on a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated April 11, 2017 ("2 Month Notice"), the tenants are entitled to compensation.

Both parties agreed that the landlord issued a 2 Month Notice to the tenants and the effective move-out date on the 2 Month Notice was July 15, 2017. Both parties agreed that the tenants moved out pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The reason indicated on the 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).

The tenant testified that the landlord did not use the rental unit for the purpose stated on the 2 Month Notice. She claimed that a "close family member" is defined as the parent, child or spouse of the landlord or the landlord's spouse's parent or child. She said that the landlord initially told her in April 2017, when issuing the notice to the tenants, that her nephew was moving into the rental unit and when the tenant told the landlord that a nephew did not qualify as a close family member, the landlord then said her mother was moving in with the nephew.

The tenant maintained that two months later, in July 2017, the landlord listed the rental unit for re-rental at a substantially higher rent of \$1,500.00 than what she was paying of \$1,130.00. She claimed that the landlord attempted to increase her rent during the tenancy but she refused to sign an agreement to that effect. She stated that she anonymously contacted the landlord via text messages through the rental posting to confirm the re-rental. The tenants provided copies of the text messages which they translated into English and the landlord's agent confirmed during the hearing that she agreed with the tenants' translation. The tenant confirmed that the landlord confirmed her name, the address of the rental unit, the rent amount, the one year fixed term requirement for the unit to be re-rented. She stated that the tenants then filed their application after the landlord confirmed she was re-renting rather than having a close family member move into the unit.

The landlord's agent confirmed that the rental unit was empty after the tenants vacated on May 14 until July 18, 2017. She said that it took approximately one month to have carpet cleaning done in June 2017, because she wanted to be present when it happened. She claimed that the 2 Month Notice was issued for the landlord's nephew to move into the rental unit. She stated that when the tenants told her that the nephew did not qualify as a close family member, she clarified that the landlord's mother and nephew would both be moving into the unit.

The landlord's agent testified that the landlord's mother, nieces and nephews had planned to visit the landlord from the United States. She said that she thought they would stay for a long time, as demonstrated by the one-way airplane ticket that was booked in March 2017, for the landlord's mother to arrive on July 18, 2017. She then confirmed that the landlord's mother was told by her doctor in early July 2017, before coming to the rental unit, that she had to have urgent cataract eye surgery so a return flight was booked for August 9, 2017.

The landlord's agent indicated that the landlord's mother resided in the rental unit from July 18 to August 9 and then returned to the United States on August 9, 2017, for her cataract surgery which took place on August 16. She provided the airplane tickets, an ID card for a patient lens implant, and an internet search of the doctor that she said performed the surgery.

The landlord's agent said that the landlord posted a rental advertisement on July 7 and 15, 2017 for re-rental beginning in September 2017, after her grandmother was scheduled to return to the United States, without knowing that the rental unit had to be occupied by a close family member for six months. She stated that the tenants sent text

messages to the landlord inquiring about the unit but she did not know it was them at the time. She claimed that the landlord agreed to re-rent it to the tenants as of August 1, 2017, but it would be a co-sharing rental with the landlord's mother, nieces and nephews. She explained that the landlord did not tell the tenants that it was a co-sharing agreement or list it in the advertisement. She maintained that when she received the tenants' application in July 2017, she went back and read the *Act* and discovered that she had to use the rental unit for a close family member to occupy for a six-month period. She said that she removed the rental advertisements at that time; the tenant disputed that indicating the landlord only removed one of two advertisements. The landlord stated that she could not find the other advertisement to remove it.

The landlord's agent stated that she personally moved into the rental unit on August 10, 2017, after the landlord's mother moved out. She testified that she has been living there since. She said that she was living on the main floor of the house with the landlord initially and then moved to the basement rental unit. When I initially questioned the landlord's agent when she moved in, she said it was a "couple days" after the landlord's mother moved out, then stated she was not sure, and then claimed that it was the day after the landlord's mother moved out. When I asked why she moved in, she claimed that it was because she wanted her own privacy and independence not because of the 2 Month Notice or the tenants' application.

Analysis

Section 49(3) of the *Act* reads as follows:

(3) A landlord who is an individual may 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 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to double the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

*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.

Overall, I found the tenant to be a more credible, direct and forthright witness compared to the landlord's agent. I found that the landlord's agent frequently changed her testimony throughout the hearing. When I questioned the inconsistencies in the landlord's agent's evidence, she changed her answers in order to cater to the questions being asked. I found her testimony to be in conflict with her overall position.

I find that the landlord's nephew does not qualify as a close family member to live in the rental unit.

I find that the landlord's intention when issuing the 2 Month Notice, was for her mother to move into the rental unit. I find that the landlord's mother did not occupy the rental unit for a reasonable period of time or the six month period after the tenants vacated and the effective date of the notice in July 2017. The landlord's mother only resided in the rental unit temporarily from July 18 to August 9, 2017, which is less than one month.

I find that, at the time that the landlord issued the 2 Month Notice, she did not intend for her daughter to move into the rental unit. I find that the landlord only indicated her daughter was moving in, in order to attempt to avoid the two-month penalty under section 51 of the *Act*. I further find that the landlord's daughter did not provide documentary proof, such as a driver's license with the basement unit address or personal mail delivered to the basement unit, to show that she resides at the rental unit and if so, when she began residing there. She did not even know when she moved into the unit, when initially questioned about it, indicating she did not know and then she moved in a "couple days" after the landlord's mother moved out. She then catered her evidence to indicate that she moved in on August 10, 2017, the day after the landlord's mother moved out of the unit on August 9, 2017.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as her mother did not occupy the rental unit for a six-month period or a reasonable period of time after the effective date of the notice. Accordingly, I find that the tenants are entitled to double the monthly rent of \$1,130.00 as compensation under section 51, which totals \$2,260.00.

As the tenants were mainly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$2,360.00, against the landlord. The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application for other unspecified remedies is dismissed without leave to reapply.

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: February 5, 2018

Residential Tenancy Branch