



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The tenant applies for compensation claiming she had been evicted under a two month Notice to End Tenancy for landlord use of property but the landlord did not move in. She claims that the landlord wrongfully told prospective landlords that she had not paid her rent and claims damages for that wrong as well.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord failed to occupy the rental unit contrary to s. 51(2) of the *Residential Tenancy Act* (the “Act”)? Has the landlord provided false information about the tenant to her prospective landlords and, if so, can the tenant be granted relief in this forum and, if so, what is the appropriate measure of damages?

Background and Evidence

The rental unit is the three bedroom upper portion of a house. The lower area of the home forms a basement suite rented to others by the same landlord.

There is a written tenancy agreement though neither party submitted a copy of it. They agree the tenancy started in June 2016. The monthly rent was \$1350.00. The tenant paid a \$675.00 security deposit. The landlord has returned the deposit to the tenant.

On March 31, 2017 the landlord served the tenant with a two month Notice to End Tenancy with an effective move-out date of May 31, 2017.

The reason given in the Notice was that the landlord or a close family member intended to occupy the premises. Under s. 49 of the *Act*, that is a valid reason for a landlord to end a tenancy.

This Notice was apparently a replacement for an earlier notice the landlord had given the tenant but which was not in the statutory form mandated by the *Act*.

The tenant did not apply to cancel the Notice but vacated on May 31. She testifies that she had great difficulty finding a new place and had to pay to put her belongings in storage. She claims that a prospective landlord had been told by this landlord that she did not pay her rent. She thinks that all her prospective landlords were told this by the landlord and that prevented her from finding replacement accommodation, at least during the month of June.

She says she stayed in a hotel for the month of June at a cost of \$2500.00 and wants to recover that cost as well as the storage fees she incurred.

The tenant says that not long after she moved out she re-attended the premises to collect her mail and was met at her former door by a woman who appeared to be of Filipino heritage and who indicated she was living there. The landlord is a Sikh.

The landlord testifies denying that he told prospective landlords that the tenant had not paid her rent when she was his tenant, though he adds that she did not pay rent for April, May or June. He did not explain why the tenant would be responsible for June rent when the landlord's Notice ended the tenancy May 31.

He says that he fully intended to move in, sparked by matrimonial difficulties he had encountered. He admits that he did not take up residence and does not deny that he re-rented the premises.

The landlord says he could not move in because his lender foreclosed on the home. Neither he nor his legal counsel could explain why a foreclosure application against the home, an application that never reached the Order Nisi state before it was resolved, would prevent him from occupying the rental unit.

Analysis

Section 51 of the *Act* provides:

51 (1) 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.**

(emphasis added)

In this case it is clear the landlord has brought himself within the penalty provision of ss. (2). The provision is strict and does not provide for exceptions in any circumstance. The tenant is entitled to recover double the last rent: \$2700.00.

Arguably, a landlord who gives a Notice of this kind in bad faith, with an ulterior purpose, is responsible for damages incurred by a tenant whether or not the Notice had

been challenged within the statutory time period after receipt and despite the levying of the penalty imposed by s. 51(2).

In this case the tenant implicitly argues that the landlord just wanted to be rid of her and that's why he gave the Notice. Though the landlord's explanation was not a complete one, I find that it has not been proved on a balance of probabilities that he did not intend to move in himself.

Regarding the allegation that the landlord had misrepresented the quality of this tenant to prospective landlords, in the face of the landlord's denial under oath and no objective or corroborative proof to show otherwise, I find that this claim has not been proved on a balance of probabilities either.

Conclusion

The tenant is entitled to the two month rent compensation under s. 51(2) of the *Act*. The remainder of her claim must be dismissed. As she has been partly successful, I award her recovery of the \$100.00 filing fee. She will have a monetary order against the landlord in the amount of \$2800.00.

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 23, 2018

Residential Tenancy Branch