



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation and for the recovery of the filing fee paid for this application.

The Landlord and the Landlord's spouse were present for the duration of the teleconference hearing, as were both Tenants. All parties were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding documents along with copies of the Tenants' evidence. The Tenants confirmed receipt of copies of the Landlord's evidence.

Both parties submitted evidence prior to the hearing. During the hearing, they were provided with an opportunity to provide testimony, present their evidence and ask questions of the other party. 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.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order for compensation?

Background and Evidence

Both parties agreed as to the terms of the tenancy. The Tenants moved into the rental unit in 2012. In June 2016, the current Landlord purchased the property and became the Landlord for the remainder of the time the Tenants resided in the rental unit. Monthly

rent was increased to \$777.75 on June 1, 2017. A security deposit in the amount of \$350.00 was paid at the outset of the tenancy.

On December 4, 2017, the Landlord served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). The Tenants confirmed receipt of this notice in person on December 4, 2017. The Landlord advised the Tenants at this time that his parents would be moving into the rental unit.

The Two Month Notice states the reason as the following:

- 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 Tenants provided 10 days notice to end their tenancy in January 2018, and moved out of the rental unit on January 15, 2017. Both parties agreed that the full security deposit in the amount of \$350.00 was returned at the end of the tenancy and that the Tenants received one month of rent from the Landlord as compensation pursuant to Section 51(1) of the *Act*.

The Tenants testified that on April 21, 2018, they received a text message from the Landlord asking them if they wanted to move back into the rental unit as his parents would no longer be moving into the unit. The Tenants and the Landlord both submitted the text message exchange in evidence. In the text message exchange, the Landlord told the Tenants that the new monthly rent would be \$1,200.00 due to the renovations that had been completed in the rental unit. Photos of the rental unit were sent by text message to the Tenants to show them the renovations completed since they moved out.

The Tenants submitted that the renovations completed in the rental unit were minor and included the installation of a backsplash in the kitchen, new paint, new handles on the kitchen cabinets and new flooring in the bathroom and kitchen. The Landlord asked the Tenants by text message to respond by noon on April 26, 2018, otherwise they would look for new tenants to rent the unit.

The Tenants applied for Dispute Resolution on April 25, 2018 as they believed that the Landlord was not honest in issuing the Two Month Notice and that instead of having his parents move in, the Landlord had plans to re-rent the rental unit at an increased monthly rent. They are seeking compensation in the amount equivalent to two months rent pursuant to Section 51(2) of the *Act*.

The Tenants testified that they did not want to move out of the rental unit and that doing so has impacted them financially due to changes that have occurred in the rental market leading to a higher cost of rent in their current home.

The Tenants also applied for the Landlord to compensate them for their moving costs which they testified would not have incurred had they not received the Two Month Notice from the Landlord. The Tenants had friends and family help them move and are asking for compensation for moving costs in an amount of \$500.00.

The Landlord testified that on November 3, 2017, he informed the Tenants that the home would be put on the market to sell. However, on November 19, 2017, his parents suggested that instead of the Landlord selling his home, his parents would sell their home and move into the rental unit. On November 21, 2018, the Landlord decided to move forward with this idea and cancelled the real estate listing for their home.

On December 4, 2017, the Landlord provided a Two Month Notice to the Tenants to end the tenancy on February 28, 2018. The Landlord testified that they planned to complete renovations prior to his parents moving in. His parents had plans to move in for mid-June 2018.

The Landlord testified that on April 21, 2018 he received a call from his father stating that they had changed their mind and would no longer be selling their house or moving into the rental unit. The Landlord testified that this change in plans was very upsetting to them so they texted the Tenants that same day and asked if they wanted to move back in. The Landlord submitted that they offered the rental unit to the Tenants for \$1,200.00 per month due to the completed renovations, but they would have accepted the Tenants renting the unit for less, including for the amount of rent the Tenants were previously paying.

The Landlord testified that the renovations completed in the rental unit included new paint, flooring in the kitchen and bathroom, a new backsplash in the kitchen and new knobs on the cabinets in the kitchen and bathroom.

The Landlord did not receive a response from the Tenants regarding whether they would like to move back in or not. Instead, he testified that he received notice of the Dispute Resolution Proceeding on April 30, 2018. As the Landlord was unsure how to proceed based on the upcoming hearing, he testified that he did not take steps to advertise the rental unit after receiving the notice of the hearing. The Landlord testified

that the rental unit has been empty since January 15, 2018 when the Tenants moved out and that he is currently unsure of the future plans for the rental unit.

The Landlord submitted in evidence a notarized letter from his mother stating that she and her husband planned to sell their house and move into the rental unit on June 15, 2018, but they changed their mind on April 21, 2018. The Landlord testified that he was unable to provide details of the real estate listing for his parents' home as they changed their mind before it was put on the market.

The Landlord testified that he issued the Two Month Notice on December 4, 2017 due to his honest intentions to have his parents move into the rental unit. He testified that he was upset when his parents changed their mind and wanted to be honest with the Tenants regarding the change of plans and to see if they wanted to move back in. The Landlord submitted that his plans were not for financial gain which is why they have not looked for new tenants in the rental unit and have left it empty while waiting for the results of the dispute resolution hearing.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find that the Landlord issued the Two Month Notice on December 4, 2017 for the reasons listed on the notice, in accordance with Section 49 of the *Act*.

However, I find that after issuing the Two Month Notice on December 4, 2017, the Landlord did not use the rental unit for the purpose stated on the notice. While the Landlord provided testimony that the rental unit is currently empty and not being used, I find there is insufficient evidence to show that the rental unit is being used by the Landlord or his family. Instead, the Landlord testified that the rental unit is currently not being used due to uncertainty with the dispute resolution proceeding.

When the Landlord's parents changed their mind about moving in, the Landlord indicated he no longer intended to use the rental unit for himself or his family. Both the Tenants and the Landlord submitted a text message exchange in evidence. On April 25, 2018, the Landlord sent a text message to the Tenants which stated, "I still haven't heard back from you guys on whether you want to move back or not. There's no pressure, but I wanted to give you guys first priority. Please let me know either way. If I don't hear back from you by tomorrow noon, I'll assume that it's a "no". And will begin to search for a renter. Thanks."

I refer to Section 51(2) of the *Act* that states the following:

- (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.

In accordance with the above, I find that the Landlord did not use the rental unit for the purpose intended on the Two Month Notice, which was using the Landlord or family member using the rental unit. I also find that the Tenants experienced a loss from having to move when they may not have had to. Section 67 of the *Act* allows for compensation from one party should a loss occur due to non-compliance with the *Act*. Pursuant to Section 51(2) and Section 67 of the *Act*, I find that the Tenants are entitled to two months compensation at \$777.75 per month for a total monetary compensation of \$1,555.50.

The Tenants also applied to recover the costs of moving which they estimated at \$500.00. As they had friends and family help with their move, they were unable to submit receipts for the costs incurred. However, as I find that the Landlord did issue the Two Month Notice with the intention of family using the unit, and provided one month compensation in accordance with Section 51(1) of the *Act*, I determine that the Tenants are not entitled to additional compensation from the Landlord for the costs of moving.

As the Tenants were partially successful in their application, I award them the recovery of the filing fee paid for this application in the amount of \$100.00.

Pursuant to the analysis outlined above, I grant the Tenants a Monetary Order in the amount of \$1,655.50 for compensation in accordance with Sections 51(2) and 67 of the *Act* and the recovery of the filing fee pursuant to Section 72 of the *Act*.

Conclusion

Pursuant to Sections 51(2), 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of \$1,655.00 for compensation equivalent to two months rent and for the

recovery of the filing fee paid for this application. The Tenants are provided with this 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.

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: June 12, 2018

Residential Tenancy Branch