



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on May 2, 2018 (the "Application"). The Tenant sought \$3,600.00 compensation under section 51 of the *Residential Tenancy Act* (the "Act"). The Tenant also sought reimbursement for the filing fee.

Both the Tenant and Landlord appeared at the hearing. The husband of the Tenant appeared at the hearing. He was a co-tenant with the Tenant (the "Tenants") but did not participate in the hearing or provide evidence. The hearing process was explained to the parties and neither had questions about the process when asked. Both parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed he received the hearing package and Tenant's evidence and did not raise any issues in this regard. The Tenant confirmed she received the Landlord's evidence; however, she said she did not know it was evidence for this hearing. After a discussion in this regard, the Tenant confirmed she had a chance to review the evidence, did not want to adjourn and was prepared to proceed.

During the hearing, the parties agreed rent was \$1,200.00 per month at the end of the tenancy. I asked the Tenant why she was claiming \$3,600.00. She said she thought a tenant was entitled to compensation equivalent to three months rent when a landlord does not follow through with the stated purpose of a notice to end tenancy under section 49 of the *Act*. The Tenant confirmed the Landlord compensated the Tenants one months rent when the section 49 notice was issued. I told the Tenant pursuant to section 51(2) of the *Act*, a landlord must compensate a tenant the equivalent of double the monthly rent if the landlord does not follow through with the stated purpose on a section 49 notice. The Tenant brought up the legislative changes to the *Act* regarding compensation under section 51 that came into force May 17, 2018. I told the Tenant these changes do not apply as the section 49 notice in this case was served prior to the changes coming into force. The Tenant agreed she wished to amend the Application to request \$2,400.00, double the monthly rent, and I amended the Application accordingly.

Both parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to \$2,400.00 compensation under section 51 of the *Act*?

Background and Evidence

Both parties agreed on the following. There was a written tenancy agreement between the Tenants and the previous owner of the rental unit. The agreement related to the main floor suite at the rental unit. The tenancy started May of 2011 and was a fixed term tenancy for one year and then went to a month-to-month tenancy. In 2015, the Landlord purchased the rental unit and therefore became the new landlord. The tenancy ended December 31, 2017. Rent at the end of the tenancy was \$1,200.00 per month.

Both parties agreed as follows. The Landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the *Act* (the "Notice") on the Tenants October 4, 2017. The Notice was effective December 31, 2017. The grounds for the Notice were that the rental unit would be occupied by the Landlord or a close family member.

The Tenant testified as follows. The Notice was served because the Landlord intended to use the rental unit. However, the Landlord listed the unit for sale. She filed for dispute resolution back then because she could not understand how the Landlord could intend to live in the unit when it was for sale. In October, she received emails from the Landlord about withdrawing the claim because he was going to move into the unit. The Landlord told her October 6, 2017 the unit would be taken off the market. On October 17, 2017, there were still showings of the unit being done. The unit was taken off the market October 21, 2017. She withdrew the claim October 25, 2017 because she understood the Landlord was moving into the unit January 1, 2018. The Tenants moved out of the unit December 31, 2017.

The Tenant further testified as follows. The unit was listed for sale again May 2, 2018. She spoke with three neighbours of the unit May 21 and 22, 2018 who said the Landlord had moved out of the unit. The neighbours said the Landlord had bought a condo and was living elsewhere. The upstairs neighbours said the house is sitting staged and only the cleaning lady is attending the unit. The unit is still for sale. She received an email from the Landlord May 27, 2018 regarding this proceeding in which he told her he is at the unit every day to shower. She attended the unit May 31, 2018 and there was a truck in the driveway with moving stuff in it.

The Tenant submitted evidence supporting her testimony that the unit was listed for sale which the Landlord did not dispute. The Tenant submitted emails between her and the Landlord which I do not need to review given the basis for my decision.

The Landlord testified as follows. The unit was originally listed for sale September 27, 2017. He was selling his house and the unit. He considered taking the unit off the market October 4, 2017 but did not. His house was sold and the conditions removed October 17, 2017. The possession date for his house was December of 2017. The unit was taken off the market October 21, 2017. I understood the Landlord to say that he did not take the unit off the market sooner in case the sale of his house did not go through.

The Landlord further testified as follows. He moved into the unit January 1, 2018. He has lived in the unit since and is currently living in the unit. He made an offer on a condo but does not own title yet. All his belongings are at the unit. He moved out of the unit while it was painted and renovated during part of May. The unit was listed for sale May 2, 2018. He received an offer and the conditions were removed a couple of days ago. The possession date is July 3, 2018 but the purchaser has allowed him to stay in the unit until the end of July. The purchaser is not a family member.

I asked the Landlord about his email to the Tenant May 27, 2018. He testified he was staying at a friend's B&B during this time as the unit was being painted and renovated. He said the moving truck in the driveway May 31 was there because he was moving a carpet.

The Landlord pointed to evidence submitted which he said supported his testimony that he is living at the residence which I will not go into given the basis for my decision. The Landlord mentioned the reasons he is selling the unit and submitted evidence in this regard which I will not detail here as it is not relevant to my decision.

Analysis

Section 51 of the *Act* sets out compensation requirements relating to notices to end tenancy issued under section 49 of the *Act*. The relevant portions of section 51 of the *Act* state:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49...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.

...

(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.

Based on the testimony of both parties, I find the following. The Notice was served on the Tenants October 4, 2017. The grounds for the Notice were that the Landlord or a close family member were going to occupy the unit. The Notice was effective December 31, 2017. The unit was listed for sale again May 2, 2018.

I accept the Landlord's testimony that he received an offer on the unit and the conditions were recently removed.

It is not necessary for me to decide whether the Landlord occupied the unit from January 1, 2018 to present. I find that, as of May 2, 2018 when the unit was listed for sale, the Landlord ceased to use the unit for the purpose stated in the Notice. A landlord cannot serve a notice to end tenancy under section 49(3) of the *Act* and then list the unit for sale once the tenants have vacated. This in my view is contrary to the *Act* which specifically addresses the situation where a landlord wants to sell a rental unit in section 49(5) of the *Act*. Further, the sale of the unit has proceeded within the six-month period set out in section 51(2)(b) of the *Act*. The possession date is irrelevant. The sale of the unit is contrary to the stated purpose in the Notice.

I also note that the Landlord's reasons for selling the unit are irrelevant. The *Act* requires a landlord to use the rental unit for the purpose stated in the section 49 notice for at least six months. There is no exception in the legislation that applies to this matter for extenuating circumstances that would relieve a landlord of this obligation.

I find the Landlord did not use the rental unit for the purpose stated in the Notice for at least six months after the effective date of the Notice. Pursuant to section 51(2) of the *Act*, the Landlord must pay the Tenant the equivalent of double the monthly rent. The Tenant is entitled to compensation in the amount of \$2,400.00.

Given the Tenant was successful in this application, I award reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$2,500.00 and I grant this Order. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: June 20, 2018

Residential Tenancy Branch