



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for compensation payable to tenants where a landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property* as under section 51(2) of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing I explored service of hearing documents upon each other and the Residential Tenancy Branch. I heard the tenants delivered their hearing documents to the landlord's wife, in person, shortly after filing. The landlord confirmed that he received the tenants' hearing documents from his wife several months ago and did not raise any issue with respect to service to his wife. The landlord testified that he provided his written response to the tenants only a few days before the hearing. The tenant confirmed receipt of the landlord's written response and stated he was prepared to respond to the landlord's submission and did not raise any issue with respect to late service. Since both parties were in receipt of the other party's hearing documents and were prepared to respond to them I deemed each party to be sufficiently served pursuant to the authority afforded me under section 71 of the Act and I admitted all of the evidence and documentation for consideration in making this decision.

Issue(s) to be Decided

Are the tenants entitled to compensation equivalent to two months of rent as provided under section 51(2) of the Act?

Background and Evidence

The tenancy started on May 1, 2015 with the former owner of the property. The rent was originally set at \$1,100.00 on the first day of every month. The rent was increased to \$1,130.00 and then \$1,175.00 during the tenancy with the most recent rent increase taking effect on July

1, 2017. The tenants were renting the upper floor of a house, including three bedrooms. I heard that there was a master bedroom that was not rented by the tenants but that they could rent it for an additional \$400.00 per month.

On June 24, 2017 the former owner served the tenants with a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") with an effective date of August 31, 2017. The reason for ending the tenancy, as stated on the 2 Month Notice is: "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 close family member intends in good faith to occupy the rental unit." The tenants vacated the rental unit by August 31, 2017 and did not pay rent for August 2017 in satisfaction of the compensation payable to tenants who receive a 2 Month Notice.

The tenant testified that he and his co-tenant remained in the same area as the rental unit and saw the rental unit advertised for rent after their tenancy ended. The tenants confirmed with a basement suite tenant of the property that other tenants moved into the rental unit after their tenancy ended. The tenants provided a copy of the advertisement they saw for the property. The advertisement indicates the rental unit, with four bedrooms including the master bedroom, was available for rent at the monthly rate of \$1,900.00.

The landlord submitted that he purchased the house with the intention of generating rental income and having his daughter, along with her son and boyfriend, move into the rental unit. The landlord stated that he communicated this intention to the former owner and the 2 Month Notice was served upon the tenants. The landlord testified that his daughter also had the intention to move into the rental unit as she gave her notice to end her employment and give up her rental unit in another city. Unfortunately, in mid-August 2017 employment plans between the landlord and his daughter's boyfriend fell through. The landlord's daughter moved in with the landlord in his home. The landlord tried to advertise the rental unit as being available for rent as "shared accommodation" with the intention of having his daughter share the rental unit with others; however, that advertisement did not result in any suitable prospects. Then, the landlord advertised the rental unit for rent, which is the advertisement the tenants provided as evidence, to "test" the rental market. One suitable prospective tenant came from that advertisement and the landlord rented the unit to that person starting on January 1, 2018. The landlord had hoped that his daughter would be the prospective tenant's "nanny" but that did not happen. I heard that the new tenant's monthly rent of \$1,900.00 is for all four bedrooms of the upper unit in the house.

The tenant responded by stating he was aware of a furnace issue as it arose every year and the tenant was aware that one of the basement suite tenants was smoking at the property. The tenant was unaware of any flooring issues. In any event, the tenant pointed out that the landlord has an obligation to use the rental unit for the purpose stated on the 2 Month Notice after the tenancy ends, not just have the intention to use it for the stated purpose.

The landlord was of the position the landlord must demonstrate he had an intention to use the rental unit for the purpose stated on the 2 Month Notice and that his real intention was to have his daughter reside in the rental unit.

Analysis

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. First of which is compensation for receiving the 2 Month Notice provided under section 51(1) and this compensation is equivalent to one month's rent. Secondly, compensation may be payable to the tenant under section 51(2), in addition to compensation payable under section 51(1), where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice.

The tenants received the compensation payable under section 51(1) and are seeking compensation pursuant to section 51(2) of the Act. Section 51(2) provides:

(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...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis added]

In this case, the reason for ending the tenancy was so that the purchaser of the property, or the purchaser's close family member, could occupy the rental unit after the tenancy ended.

Where a tenant disputes the 2 Month Notice the landlord's good faith intention to use the rental unit for the stated purpose is the issue to determine at a hearing. However, if a tenancy ends pursuant to a 2 Month Notice, the landlord's intention is no longer the issue. The issue to determine after the tenancy has ended is did the landlord use the rental unit for the purpose stated on the 2 Month Notice. There is no exemption to the landlord's obligation to use the rental unit for the stated purpose such as "extenuating circumstances". [The Act changed on May 17, 2018 to provide compensation equivalent to 12 months of rent under section 51(2) for 2 Month Notices issued on or after May 17, 2018 but there is also an exemption to having to pay

this compensation where the landlord shows that “extenuating circumstances” prevented the landlord from using the rental unit for the stated purpose].

In this case, the landlord, or his close family member (which includes his parent, child or spouse), did not occupy the rental unit for at least six months after the tenancy ended. Rather, the unit was re-rented to another tenant who is not the landlord’s close family member starting on January 1, 2017 meaning the landlord only held possession of the unit for four months after the tenancy ended. Accordingly, I find the tenants have established that the section 51(2)(b) applies in these circumstances and the tenants are entitled to compensation equivalent to two months of rent.

In light of the above, I grant the tenants’ request for compensation equivalent to two months of rent, or \$2,350.00, and I further award the tenants recovery of the \$100.00 filing fee paid for this application. I provide the tenants with a Monetary Order in the sum of \$2,450.00 with this decision to serve and enforce upon the landlord.

Conclusion

The tenants are provided a Monetary Order in the sum of \$2,450.00 to serve and enforce upon the landlord.

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: July 24, 2018

Residential Tenancy Branch