



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On May 19, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to request a monetary order for damages or compensation under the Act and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenant and Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlords testified that they received each others documentary evidence that I have before me.

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.

Issues to be Decided

- Has there been a breach of Section 51 of the *Act* by the Landlord?
- Is the Tenant entitled to compensation pursuant to section 51 of the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The testimony of both parties was that the tenancy began on July 1, 2016, as a month to month tenancy. Rent in the amount of \$1235.00 was to be paid by the first day of each month, and the Tenant paid the Landlord a \$600.00 security deposit at the beginning of the tenancy.

All parties agreed that the Landlord personally served the Tenant a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") on January 19, 2018. The Notice indicated that the Tenant was required to vacate the rental unit on March 31, 2018. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Both parties agreed that the Tenant moved out of the rental unit, in accordance with the Notice on March 31, 2018, and that the Tenant's security deposit was returned to the Tenant.

The Tenant testified that he drove by the rental property on May 19, 2018, and noticed a for sale sign on the lawn with a sold sticker. The Tenant provided a date stamped picture he took of the property with the sold sign, into documentary evidence.

The Landlord testified that his son did not move in as planned and that he did sell the property, as of June 28, 2018. The Landlord argued that he sold the property due to exceptional health and stress reasons and therefore the Tenant was not entitled to compensation.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51 of the *Act*. I note that section 51 of the *Act* was amended on May 17, 2018. Therefore, I must first determine if the amended legislation pertains to the Notice issued in this case or if this Notice falls under the old legislation.

The royal assent for the legislated amendments was received on May 17, 2018, and stated that the amendments apply to all notices issued as of the date of royal assent and onwards.

In this case, I find that the Notice was issued on January 19, 2018, prior to the date of royal assent and therefore falls under the form and content of the old legislation.

Section 51 of the old legislation stated:

Tenant's compensation: section 49 notice

- 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.

I accept the testimony of the Landlord that his son did not move into the rental property as planned, and that he sold the rental property on June 28, 2018. I find that the Landlord is in breach of section 51 of the *Act*, as he did not use the property for the stated purpose on the Notice.

Pursuant to section 51 of the *Act*, I find that the Tenant has successfully proven he is entitled to compensation for the Landlord's breach of the *Act*. Therefore, I must grant the Tenant a monetary order in the amount of \$2,470.00, the equivalent of double the monthly rent under this tenancy agreement, as compensation.

I acknowledge the testimony of the Landlord, that he had medical and stress issues that led to his decision to sell the property. I note that notices issued pursuant to section 49 of the *Act*, before May 17, 2019, have no provision to allow an arbitrator discretion for extenuating circumstances when rendering their decision, pursuant to section 51 of the *Act*.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in his application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for his application.

Conclusion

I grant the Tenant a Monetary Order in the amount of \$2,570.00. The Tenant is 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: July 25, 2018

Residential Tenancy Branch