



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 as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenant is seeking compensation of two month's rent due to the landlord failing to comply with the reason stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 28, 2017 ("2 Month Notice") for a minimum of six months as required by the *Act*.

The tenant, a support person for the tenant and co-landlord AA ("co-landlord") attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The co-landlord confirmed being served with the documentary evidence from the tenant and that they had the opportunity to review that documentary evidence prior to the hearing. The co-landlord confirmed that the tenant was not served with the landlord's documentary evidence and as a result, the landlord's documentary was excluded in full as it was not served in accordance with the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules").

Preliminary and Procedural Matters

Firstly, the tenant was advised that due to only naming landlord respondent NAA in their application, that any resulting monetary order would only name respondent NAA and not co-landlord AA who attended the hearing on behalf of respondent NAA. The tenant stated that she wanted to proceed with the hearing versus withdrawing her application

and being granted leave to reapply. As a result, any resulting monetary order will only name NAA as that is the only respondent named in the application before me in accordance with the Rules.

In addition, the parties confirmed their email addresses during the hearing. The parties confirmed their understanding that the decision will be emailed to both parties and that the landlord would be emailed with a monetary order, if successful.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of double the monthly rent pursuant to section 51(2) of the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

There is no dispute that a fixed-term tenancy between the parties started on October 15, 2013 and reverted to a month to month tenancy after November 30, 2014. A copy of the tenancy agreement was submitted in evidence. The parties confirmed that monthly rent was originally \$1,380.00 per month and due on the first day of each month. The parties also agreed that rent was increased over the course of the tenancy and that the most recent amount of monthly rent before the tenancy ended was \$1,456.93 per month. There is also no dispute that the landlord served the tenant with the 2 Month Notice which indicates the reason to end tenancy as:

“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.).”

[Reproduced as written]

The parties confirmed that the 2 Month Notice was not dispute by the tenant and that she vacated on December 31, 2017 which was the effective vacancy date listed on the 2 Month Notice. The landlord stated that the tenant was given an extra month as a courtesy as the 2 Month Notice was dated September 28, 2017.

The landlord stated that he sent an email to the tenant dated November 7, 2017 (“email”), a copy of which was submitted by the tenant in evidence. In that email, the landlord writes in part:

“...there is a chance I may delay my move in date by 3-6 months. You are more then welcome to stay in unit subject to a fixed term tenancy contract with a move out date by March 31, 2018...”

[Reproduced as written]

The tenant stated that she did not take the landlord up on his offer to stay longer and vacated on December 31, 2017 in accordance with the 2 Month Notice. The tenant also denied that she ever consented to cancel the 2 Month Notice. There is no dispute that the tenant did not pay December 2017 rent as compensation for having been served by the landlord with a 2 Month Notice. The tenant is seeking compensation of two month's rent due to the landlord failing to comply with the reason indicated on the 2 Month Notice.

The tenant submitted a copy of an internet posting which the landlord confirmed was posted by the landlord which advertised the rental unit for \$1,945.00 in rent and that the posting was dated January 1, 2018. In that ad the wording includes “1 year lease required”. The landlord stated that he only decided to re-rent the rental unit after his project did not proceed as planned and that he no longer had to be located in the area of the rental unit as a result. The landlord also stated that he does not believe he has to give the tenant any further compensation as the tenant was offered to stay longer and did not take the landlord up on that offer.

The landlord confirmed during the hearing that he secured new tenants either at the end of January 2018 or the beginning of February 2018 for \$1,945.00 per month.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

Section 51(2) of the *Act* applies and states:

(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.

[My emphasis added]

As the landlord has confirmed re-renting the rental unit to new tenants effective late January or early February of 2018, I find the landlord failed to use the rental unit for the stated purpose for at least six months as required by the *Act*. Therefore, I find the landlord breached the *Act* by re-renting in approximately one month from when the tenant vacated the rental unit and that the landlord failed to wait at least six months as required by the *Act*. The landlord confirmed during the hearing that he secured new tenants either at the end of January 2018 or the beginning of February 2018 for \$1,945.00 per month which is **\$518.07 or over 33% more than the tenant was paying at the end of her tenancy on December 31, 2017**. I find the landlord owes the tenant **\$2,913.86** which is double the \$1,456.93 monthly rent pursuant to section 51(2) of the *Act*. I note that this amount is based on the law that was in effect on September 28, 2017 when the 2 Month Notice was issued.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

The tenant has established a total monetary claim of **\$3,013.86** as described above. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$3,013.86** accordingly.

In addition to the above, I disagree with the landlord that he was not required to further compensate the tenant based on his email to the tenant with the option to stay longer due to a change in plans as described above. I note that in his email he writes:

“...**there is a chance I may** delay my move in date by 3-6 months. You are more then welcome to stay in unit subject to a fixed term tenancy contract with a move out date by March 31, 2018...”

[My emphasis added]

I find the words “there is a chance I may” not be definitive whatsoever and that this does not alter the requirement under section 51(2) of the *Act* which requires the landlord to comply with the reason stated in the 2 Month Notice and if they fail to do so, to pay the tenant double the month rent.

In addition to the above, RTB Policy Guideline 11 – Amendment and Withdrawal of Notices applies and states in part:

“**A landlord** or tenant **cannot unilaterally withdraw a Notice to End Tenancy.** With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date.”

[My emphasis added]

Given the above and taking into account that the tenant testified that she did not consent to the withdrawal of the 2 Month Notice and the landlord’s confirmation that the landlord did not obtain anything in writing from the tenant to support that the 2 Month Notice was withdrawn by consent of the parties, I find the landlord was required to rely on the 2 Month Notice as stated and not re-rent the rental unit for at least six months after December 31, 2017. Due to the landlord re-renting the rental unit by February 2018 to new tenants for over 33% more in monthly rent I find the landlord must pay the tenant two month’s rent in compensation as described above.

I caution the landlord not to use the rental unit for a different reason other than what is stated in the 2 Month Notice in the future.

Conclusion

The tenant’s application is fully successful.

The landlord has failed to comply with the reason stated in the 2 Month Notice for at least six months from the effective date of the 2 Month Notice contrary to the *Act*. The

tenant has met the burden of proof and has established a total monetary claim of \$3,013.86. The tenant has been granted a monetary order pursuant to section 67 of the *Act*, in that amount. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned as described above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 9, 2018

Residential Tenancy Branch