



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 for Dispute Resolution under the *Residential Tenancy Act* (the Act). The Tenants applied for a monetary order for damage or compensation under the Act and for the return of their filing fee.

The Landlord and Tenants all appeared as did an advocate and interpreter for the Landlord. All parties agreed that the Notice of Hearing and evidence had been served appropriately by the Tenants and that the Landlord did not submit any evidence ahead of the hearing. All parties agreed that the Tenants had uploaded some of their evidence under the Landlords access number but that all evidence submitted originated from the Tenants. I find that the Landlord was duly served with the Notice of Hearing documents in accordance with sections 88 and 89 of the Act.

The Tenants and Landlord and his interpreter were affirmed to be truthful in their testimony and were provided the opportunity to present their testimony and evidence. The Landlord agreed that the testimony of the interpreter could be relied upon to represent his interests.

I have reviewed all oral, written and documentary evidence before me that met the Rules of Procedure. Only the evidence relevant to the issues and finding in this matter are addressed in this Decision.

Issues to be Decided

- Are the Tenants entitled to a monetary order for damage or compensation pursuant to section 51 of the Act?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

The Tenants testified that the tenancy began five years ago but were unsure of the exact date and that there was no written tenancy agreement. The tenancy began between the Landlord and one Tenant's sister with the current Tenants moving in later. The Tenants testified that they moved out and the tenancy ended January 31, 2018. Rent was payable the 1st of each month in the amount of \$1450.00. The Landlord confirmed that these details are accurate and could not provide any further information on when the tenancy started. The Landlord confirmed that he collected rent from the current tenants. I find that a tenancy existed between the named Landlord and Tenants.

All parties agreed that the Landlord served the Tenants a Two Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in person on November 28, 2017 with an effective date of April 31, 2018, likely meant to be the last day of April 2018, the 30th. The Tenants testified that they notified the Landlord January 10, 2018 that they were moving out January 31, 2018 and that is when they left the rental unit.

The Tenants entered the Notice into evidence which shows the reason for the Notice checked off as follows:

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 testified that they noticed For Rent signs in the rental unit shortly after having moved out and provided pictures of this into evidence. The Landlord confirmed that since the Tenants had moved out earlier than expected he felt he needed to rent the unit out to fill the gap. The Landlord testified that he was intending to renovate the unit and then move in himself but the renovations are still in progress. He still intends to move in when the renovations are done and after he has sold his current house. The Landlord also testified that the person currently living in the rental unit during renovations is not a family member, is not paying rent and is there to monitor the house.

Analysis

I have carefully reviewed the testimony and evidence provided by the parties in this dispute and, based on undisputed testimony and a balance of probabilities, I find as follows:

This is an application pursuant to section 51 of the Act. This section of the Act was amended on May 17, 2018 and, 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.

As this Notice was issued on November 28, 2017 and royal assent for the amended legislation was received on May 17, 2018 stating that the amendments apply to all notices issued as of the date of royal assent and onwards, I find that the Notice was issued 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 he intended to renovate the rental unit and then move into it himself. I also accept the undisputed testimony that the house is currently being renovated and that a party unrelated to the Landlord is currently occupying the rental unit during the renovations. The reason stated for the Notice was for the Landlord's use and renovations were not given as an additional reason for the Notice. It has been several months since the effective date of the Notice and the rental unit is still not being used for the stated purpose on the Notice. Additionally, the

Landlord provided no evidence that he or any family member has taken steps to occupy the house or will be. Therefore, I find that the Landlord did not follow through with the reason for the end of tenancy stated on the Notice and therefore is in breach of section 51 of the Act.

Pursuant to section 51 of the Act, I find that the Tenants have successfully proven they are entitled to compensation for the Landlord's breach of the Act. Therefore, I grant the Tenants a monetary order in the amount of \$2900.00 which is double the monthly rent of \$1450.00 payable as agreed upon by the parties.

I acknowledge the testimony of the Landlord that the Notice may have been issued in good faith but note that Notices issued pursuant to section 49 of the Act before May 17, 2018 have no provision to allow an arbitrator discretion for extenuating circumstances when rendering a decision pursuant to section 51 of the Act.

As the Tenants are successful in his application, I award the recovery of the filing fee paid for the Application of Dispute Resolution in the amount of \$100.00 to the Tenants, pursuant to section 72 of the Act.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of \$3000.00 for compensation under the Act and recovery of the filing fee for this application. Should the Landlord fail to comply with this Order it 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: September 19, 2018

Residential Tenancy Branch