



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This Hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage or compensation under the *Act* pursuant to sections 51 and 67 of the *Act*, and
- the recovery of the filing fee for this application pursuant to section 72 of the *Act*.

The Tenant and the Landlord attended the teleconference hearing. Both parties were sworn-in and were given a full opportunity to provide sworn testimony and present their evidence.

The Landlord received the Tenant's notice and evidentiary materials which were sent by the Tenant via registered mail as reference in the cover page of this decision. As such, I find the Landlord was served with the notice of this hearing and evidentiary materials in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the Tenant entitled to a monetary award as compensation provided under section 51(2) of the *Act*?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

While I have considered all the documentary evidence and the testimony presented by the parties, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties agreed that the tenancy began on May 1, 2015 and ended on December 31, 2017 as a result of the Landlord giving the Tenant a Two Month Notice to End Tenancy for Landlord's use of Property (Two Month Notice), requiring the Tenant to vacate by January 31, 2018. The monthly rent at the time was \$1,192.00. The Two Month Notice submitted into evidence indicated that:

The rental unit will be occupied by the landlord or landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The Tenant testified that the rental unit was sold a few weeks after December 31, 2017, and submitted in evidence, a copy of the Land Title Search result confirming that the rental unit in dispute was transferred from the Landlord to new owners on January 30, 2018.

The Tenant submitted further testimony and evidence that on February 6, 2018 the new owners advertised the unit for rent in a popular site used by landlords and tenants.

I accept the Landlord's testimony that at the time that the Two Month Notice was issued, the Landlord's intention was for his parents to move in and occupy the rental unit.

The Landlord testified that while the parents were preparing to move into the rental unit, the parents were approached by a neighbour with an offer for the Landlord to purchase the property. As this was a cash offer, the Landlord accepted the offer, sold the property and his parents did not move into the rental unit as intended.

The Landlord further testified that as it was the end of the year, he extended the Two Month Notice by an additional month to January 31, 2018.

Analysis

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the landlord for the landlord's use of the property.

The relevant sections of the *Act* are provided below as the legislation was written and in force at the time the tenants were issued the Two Month Notice in October 24, 2017. Recent legislative changes that took effect on May 17, 2018 to these sections of the *Act*, are not retroactive.

Section 49 of the *Act* stated in part as follows:

- 49(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*
- (a) not earlier than 2 months after the date the tenant receives the notice...*

At the time the Notice to End tenancy was issued, section 51 of the *Act* stated, in part, as follows:

- 51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] 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.***

[Emphasis added]

I find that the Tenant has presented sufficient and undisputed evidence to prove that the Landlord did not use the rental unit for the purposes stated on the Two Month Notice, specifically, that his close family member would be living in the rental unit. The property was sold and transferred to new owners on January 30, 2018. The Landlord's close family member did not occupy the rental unit.

I find that the Tenant is entitled to monetary compensation in accordance with the provisions of section 51(2) of the *Act*. The tenant's monthly rent payable under the tenancy agreement was \$1,192.00. Therefore, the monetary compensation is equivalent to double the monthly rent, for a monetary award of \$2,484.00.

As the Tenant was successful in the application, I find the Tenant is entitled to recover the cost of the filing fee in the amount of \$100.00.

Conclusion

I find that the Tenant is entitled to a monetary award pursuant to sections 51(2), 67 and 72 of the *Act*, as a result of the Landlord's failure to use the rental property for the stated purpose provided on the Two Month Notice.

As such, I grant a Monetary Order in favour of the Tenant in the amount of **\$2,584.00** being equivalent of double the monthly rent payable under the tenancy agreement and the recovery of the \$100.00 filing fee.

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 06, 2018

Residential Tenancy Branch