Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 16, 2018 (the "Application"). The Tenants sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. Nobody appeared at the hearing for Landlord T.S. I explained the hearing process to the parties who did not have questions in this regard. The parties provided affirmed testimony.

The Tenant sought $35,000.00 being 12 months rent for the Landlord failing to follow through with the stated purpose of a notice to end tenancy issued under section 49 of the *Residential Tenancy Act* (the "*Act*") and 3 months rent for breach of quiet enjoyment during the tenancy.

Rule 2.3 of the Rules of Procedure states that claims in an Application for Dispute Resolution must be related. It was my view that the claims made in the Application were not related and therefore I asked the Tenant which issue he wanted me to consider. The Tenant advised that he wanted me to consider the claim for compensation under section 51 of the *Act*. The Tenants' claim for 3 months rent for breach of quiet enjoyment during the tenancy is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Tenants also sought $73.80 for postage costs. I advised the Tenant he was not entitled to reimbursement for such costs and that I would not consider this claim. This claim is dismissed without leave to re-apply.

The Tenants had submitted evidence prior to the hearing. The Landlords had not submitted evidence. I addressed service of the hearing package and evidence.

The Landlord confirmed he received the hearing package and evidence. The Landlord originally sought an adjournment of this hearing on the basis that he did not have his evidence prepared. I asked why this was and the Landlord said there had been a loss in his family. After much discussion about when the hearing package and evidence were received, the Landlord agreed that he was ready to proceed with the hearing and we did proceed.

In relation to Landlord T.S., the Tenant testified that he sent the hearing package by express post to Landlord T.S.'s address on July 18, 2018. The Tenant had submitted evidence of this which includes Tracking Number 1 as noted on the front page of this decision. The Canada Post website shows the package was returned because the recipient is not located at the address provided. The Tenant testified that he also served the hearing package and evidence on Landlord T.S. November 5, 2018 in person at his residence.

Based on the undisputed testimony of the Tenant in relation to service, I find Landlord T.S. was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Act*. Although I have concerns about the timing of the personal service, I do accept that the hearing package and evidence were served in sufficient time to allow Landlord T.S. to appear at the hearing.

I note that Landlord T.S. has been included on the Application as it is his name on the Two Month Notice to End Tenancy for Landlord's Use of Property as the landlord. I find it appropriate that he is named in the Application as he was clearly acting as agent for the Landlord and therefore fits the definition of landlord under the *Act*.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation under section 51 of the *Act*?

2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and his wife as landlords and the Tenants as tenants. It is in relation to the rental unit. The tenancy started September 1, 2016 and was for a fixed term ending February 28, 2018. The tenancy then became a month-to-month tenancy. Rent was $2,600.00 per month due on the first day of each month.

The parties agreed the Tenants moved out of the rental unit March 30, 2018.

A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") was submitted as evidence. Both parties agreed this is the Notice that was served on the Tenants. It is dated February 28, 2018. The effective date was April 30, 2018. The grounds for the Notice are that "the rental unit will be occupied by the landlord or the landlord's close family member". The parties agreed the Notice was served on the Tenants February 28, 2018.

The Tenant advised that he provided notice under the *Act* that he was vacating the rental unit early. The Landlord agreed that the Tenants provided notice that they were vacating early.

An issue arose in relation to the Landlord subsequently serving a 10 Day Notice on the Tenants. I understood the parties to say this occurred March 10, 2018. The Tenant advised that he took March rent free due to being served with the Notice. The Landlord took the position that the Tenant received March and April rent free.

The Tenant testified that the Landlord put the rental unit up for sale a few weeks after he moved out and that the house was sold five months later. The Tenant said the house was listed in May, re-listed in July and sold in August.

The Tenants provided evidence in relation to the listing and sale of the rental unit which I have not outlined here as the Landlord did not dispute the testimony of the Tenant in this regard and agreed with it.

The Landlord's wife joined the conference part of the way through. She acknowledged that the rental unit was listed for sale in May, listed with a different price in July and sold in August.

Both the Landlord and his wife testified that they served the Notice on the Tenants because they intended to move back to the location of the rental unit for a job opportunity. Both testified that the job opportunity fell through and so they could not move back.

The Landlord's wife testified that the Tenant agreed he would leave the rental unit at the end of February but that he stayed until the end of March. The Landlord's wife also said the Tenant agreed with the end of the tenancy and agreed to leave at the end of March. The Landlord's wife said they did not feel safe with the Tenant in the rental unit.

Both the Landlord and his wife provided a lot of testimony and made submissions in relation to the history of this tenancy, repair issues in the rental unit and prior arbitrations. I do not find these issues relevant to the issue before me and therefore have not outlined this testimony or these submissions here.

Analysis

The Notice was served on the Tenants in February and therefore the legislation in force at that time applies to this matter.

Section 49 of the *Act* allowed a landlord to end a tenancy for landlord's use of property in the specific circumstances outlined in the section.

The Notice was issued under section 49(3) of the *Act* which stated:

> (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* set out compensation due to tenants served with a notice to end tenancy under section 49 of the *Act* and stated:

> (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,
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> 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.

Here, the Tenants provided notice that they were vacating the rental unit before the effective date of the Notice and did vacate the rental unit at the end of March. The Tenants were permitted to give this notice pursuant to section 50 of the *Act* which stated:

> 50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49…the tenant may end the tenancy early by
>
> > (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
> >
> > (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
>
> (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
>
> (3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

As stated in section 50(3) of the *Act*, the Tenants' right to compensation under section 51 of the *Act* was not affected by their notice to end the tenancy earlier than the effective date of the Notice.

An issue arose during the hearing in relation to a 10 Day Notice which I understood was served on the Tenants March 10, 2018. The Landlord said the Tenants did not pay rent for March or April. The Tenants were not required to pay rent for these months. The Tenants were entitled to one month of rent free pursuant to section 51(1) of the *Act* which stated:

> 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.

The Tenants were not required to pay rent for April as they gave notice to end the tenancy earlier than the effective date of the Notice and vacated the rental unit at the end of March. I do not find the 10 Day Notice relevant in the circumstances.

I note that the Landlord and his wife said the Tenants agreed to vacate the rental unit. At first, the Landlord's wife said the Tenants agreed to leave at the end of February. Then she said they agreed to leave at the end of March. The Landlord provided no evidence in relation to such an agreement. I acknowledge that this is the Tenants' application and their onus to prove; however, I am satisfied based on the Notice submitted, and testimony of the parties that the Notice was served on the Tenants, that this tenancy ended because of the Notice.

I also note that it was open to the Tenants to accept the Notice and vacate the rental unit. It was also open to the Tenants to provide notice that they were ending the tenancy early under section 50 of the *Act*. Neither of these actions affected the Tenants' right to compensation under section 51 of the *Act* which is the issue before me.

Here, the Landlord and his wife agreed they listed the rental unit for sale in May, listed it with a different price in July and sold it in August. It is clear that the Landlord did not use the rental unit for the stated purpose in the Notice for at least six months beginning within a reasonable period after the effective date of the Notice as he sold the rental unit within four months of the effective date of the Notice.

The Landlord and his wife said they intended to move back to the location of the rental unit for a job but that the job offer fell through. The legislation in force at the time the Notice was issued did not allow landlords to be relieved of liability under section 51 of the *Act* based on extenuating circumstances. The Landlord was required to use the rental unit for the purpose stated in the Notice within a reasonable time and for at least six months. The Landlord failed to do so. The Landlord must therefore pay the Tenants an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I note that the Landlord and his wife testified that they did not feel safe with the Tenants in the rental unit. This is not a basis to serve the Tenants with the Notice and therefore I do not find this relevant to the issue before me.

I award the Tenants compensation in the amount of $5,200.00 pursuant to section 51 of the *Act*.

As the Tenants were successful in this application, I find they are entitled to reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to $5,300.00 compensation and I grant the Tenants a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenants are entitled to $5,300.00 compensation and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: December 20, 2018

Residential Tenancy Branch