



Dispute Resolution Services

Page: 1

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 compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*, and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenant testified that he served the landlords individually with the notice of this hearing on August 10, 2018 by Canada Post registered mail, which was confirmed received by the landlords. The tenant testified that he served the landlords individually with his evidentiary materials on November 1, 2018, which was confirmed received by the landlords. The landlords testified that they served the tenant with their evidentiary materials on November 14, 2018 by Canada Post registered mail, which was confirmed by the tenant.

Based on the undisputed testimonies of the parties, I find that both parties were served with the documents for this hearing in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as compensation pursuant to section 51 of the *Act*?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, 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.

A copy of the written tenancy agreement was not submitted into evidence; however the terms of the tenancy were confirmed as follows:

- The tenancy began October 1, 2013, as a one-year fixed term tenancy. Once the fixed-term ended, the tenancy converted to a month-to-month tenancy.
- Monthly rent, payable on the first day of the month, was \$1,140.00 at the end of the tenancy.
- The tenancy ended on July 1, 2018 when the tenant moved out of the rental unit.

The tenant stated that on May 31, 2018 he received a Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) requiring him to vacate the rental unit by July 31, 2018. The Two Month Notice submitted into documentary evidence by the tenant stated the reason for ending the tenancy as:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenant alleged that the purchaser did not use the property for this stated purpose but rather that the landlord placed the rental unit for rent on July 31, 2018 on a popular classifieds website, at a higher monthly rent amount of \$1,500.00. The tenant submitted a copy of the online ad as documentary evidence in support of his claim.

The landlords confirmed that they posted the rental unit for rent online on July 31, 2018 and took possession of the rental unit on August 1, 2018. The landlords stated that they

signed a fixed-term one-year lease with a new tenant beginning September 1, 2018 for a monthly rent of \$1,500.00.

From August 1 to September 1, 2018, the landlords testified that the unit was empty and as such they did some maintenance and painting in the rental unit.

Landlord H.S. explained that at the time they purchased the rental unit and requested the Two Month Notice be served on the tenant at the end of May 2018, she had a good faith intention to move out of the home she shared with her father and landlord R.S., who is her brother, and move in to the rental unit. The landlords testified that after their mother passed away in 2015 they moved back to the family home to support their father for what was planned to be a temporary period of time. Landlord R.S. was planning to continue to reside with the father, however a job transfer opportunity arose which required him to move out of town.

As landlord R.S. was no longer able to reside with their father, it then became landlord H.S.'s obligation to continue to reside with her father in order to assist him financially with his housing costs. Therefore, they decided to rent out the rental unit.

Analysis

In this matter, the tenant is seeking compensation under section 51 of the *Act*, which states 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.
 - (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
 - (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

- (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
 - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
 - (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Although the landlords testified to their good faith intention to use the rental unit as a residence for H.S. at the time the Two Month Notice was issued, I explained to the parties during the hearing, that their intention at the time the notice was issued is not relevant to a determination in this matter. Under section 51 of the *Act*, the only considerations are whether the rental unit was actually used for the stated purpose provided on the Two Month Notice, and if not, were there extenuating circumstances for not doing so.

Based on the testimony and evidence of both parties, I find that there is no dispute that the landlords did not use the rental unit for the stated purpose within a reasonable period after the effective date of the Two Month Notice, and the rental unit was not used for the stated purpose for at least 6 months' duration after the effective date of the notice.

The landlords have claimed that there were extenuating circumstances that prevented them from using the rental unit for the stated purpose. The landlords submitted a

worksheet with their calculations to show that landlord H.S. was not able to financially continue to support her father if she did not reside at her father's home and rent out the rental unit.

Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy explains the criteria for determining extenuating circumstances on page 3, as follows:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

I find that the landlords have failed to prove that the circumstances preventing them from using the rental unit for the stated purpose were "extenuating" as interpreted by Policy Guideline 50 noted above.

It is admirable that landlord H.S. decided to continue to reside with her father to assist him financially, instead of moving into the rental unit. However, I find that, based on the testimony and evidence presented, on a balance of probabilities, landlord H.S.'s decision not to move into the rental unit was the result of a choice made by landlord H.S. to take on the responsibility to assist her father financially, rather than circumstances that the landlord was unable to choose, or circumstances which "stopped the landlord from accomplishing the purpose or using the rental unit", as described in the extenuating circumstances examples provided above. Extenuating circumstances as interpreted by Policy Guideline 50 *stop* a landlord from carrying out the stated purpose provided on the Two Month Notice; this is different from circumstances that

occur that might be less personally desirable or more financially onerous for the landlord but still allow the landlord to carry out the stated purpose for the use of the rental unit. I find that the circumstances in the current matter fall under the latter of these two categories.

As such, 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 \$1,140.00. Therefore, the monetary compensation is equivalent to 12 times the monthly rent payable under the terms of the tenancy agreement, for a monetary award of \$13,680.00.

The tenant has also requested to recover the costs of the \$100.00 filing fee for his Application for Dispute Resolution and registered mail costs of \$20.00 pertaining to the service of documents to the landlords for this hearing.

Section 72 of the *Act* allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. As the tenant was successful in his application, I find that he is entitled to recover the cost of the filing fee in the amount of \$100.00.

While provisions regarding disbursement costs are provided for in Supreme Court Proceedings, they are specifically not included in the *Residential Tenancy Act*. Therefore, administrative disbursement costs such as registered mailing costs, printing and travel expenses are not recoverable through this dispute resolution process and the tenant's claim to recover the \$20.00 pertaining to registered mail costs is dismissed.

In summary, I grant a Monetary Order to the tenant in the amount of \$13,780.00 in full satisfaction of his monetary award for statutory compensation pursuant to section 51 of the *Act* and the recovery of filing fee paid for this application pursuant to section 72 of the *Act*.

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 purchasers' 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 \$13,780.00 being the equivalent of 12 times the monthly rent payable under the tenancy agreement, and recovery of the \$100.00 filing fee.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: December 24, 2018

Residential Tenancy Branch