



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for November 22, 2018. Both parties consented to an adjournment of the matter to allow for the service of tenants' application to the landlord, as well as the service of each other's evidentiary materials.

The adjournment decision dated November 23, 2018 noted the requirements for service of the hearing package and evidence. The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenants also acknowledged receipt of the landlord's evidence for this hearing, and were ready to proceed.

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

At the beginning of the hearing the tenants confirmed that the landlord had returned their security deposit to them. Accordingly, this portion of the tenants' application is cancelled.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This fixed-term tenancy began on September 15, 2017, and was to end on September 15, 2018. Monthly rent was set at \$2,000.00 per month, payable on the first of each month. The landlord collected and returned to the tenants the security deposit of \$1,000.00 in full at the end of the tenancy.

The tenants moved out on April 30, 2018 pursuant to a 2 Month Notice issued to them by the landlord. The landlord discussed the end of the tenancy with the tenants, before formally serving the tenants with the 2 Month Notice on March 29, 2018. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." A copy was included as part of the tenants' evidence.

The tenants are seeking compensation as they moved out pursuant to the 2 Month Notice, and they believe the landlord did not use the home solely for the intended purpose as stated in the 2 Month Notice issued to them. The landlord does not dispute that they did sell the home on July 15, 2018 due to a change in circumstances after they had moved in. The landlord testified that they did issue the 2 Month Notice to the tenants in good faith, and for the reason stated on the 2 Month Notice, but despite their intentions the landlord sold the home as they could no longer keep it. The landlord's fiancé testified in the hearing that she was accepted into a program in a different geographic program, and the landlord's personal circumstances also changed.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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 have considered the evidence and testimony of both parties. It was undisputed by the landlord that the home was sold. Although the landlord did move in, and regardless of the original intentions of the landlord, the fact is that this tenancy was ended by the landlord under section 49 of the *Act*, which only allows for the stated purpose on the 2 Month Notice. In this case it was for the landlord to move in. Section 49 of the *Act* does not allow for the landlord to end the tenancy in order to sell the property less than 3 months of moving in, which is what the landlord did in this case, whether that was the original intention or not.

I find that the tenants have demonstrated that they are entitled to a Monetary Order of double their monthly rent pursuant to section 51(2) of the *Act*. Based on the evidence before me, I find that the landlord failed to use the rental property strictly for the reason provided on the 2 Month Notice. I find that the landlord sold the home, and only moved in for a short period of time.

For the reasons outlined above, I find that the tenants are entitled to compensation as set out in section 51(2) of the *Act*. I therefore find that the tenants are entitled to the compensation of the equivalent of two months' rent. As the normal monthly rent was set at \$2,000.00, I find that the tenants are entitled to a Monetary Order in the sum of \$4,000 as claimed.

I note that the tenancy agreement submitted is for a fixed-term tenancy. Although the tenants did not apply for further compensation related to the early end of this fixed-term tenancy, nor did they apply to cancel the 2 Month Notice when issued to them, for future reference, the *Act* states the following about how a fixed-term tenancy can be ended:

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) *A tenancy ends only if one or more of the following applies:*

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 49(2) of the Act states “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,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

As the tenants were successful in their application I find that they are entitled to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$4,100.00 for the landlord's failure to comply with section 49 of the *Act*, and for recovery of the \$100.00 filing fee for this application.

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply

with this Order, then this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenants withdrew their application for the return of their security deposit as it was returned to them by the landlord.

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: January 10, 2019

Residential Tenancy Branch