



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was accompanied by an Interpreter. The parties each gave affirmed testimony, and the tenant called one witness who gave affirmed testimony. The landlord's interpreter was also affirmed to well and truly interpret the proceedings from the English language to the landlord's native language, and from the landlord's native language to the English language to the best of the interpreter's ability. The parties were given the opportunity to question each other and the tenant's witness, and to give submissions.

At the outset of the hearing, I questioned the parties about the spelling of the landlord's surname, and determined that the spelling in the Residential Tenancy Branch case management system is an error. The name of the landlord has been amended, by consent, and the frontal page of this Decision reflects that amendment.

The landlord's interpreter requested to adjourn the hearing to allow more time to file evidentiary material, submitting that the landlord does not speak much English and didn't know about the time limits. The tenant opposed the adjournment.

The Rules of Procedure are clear about time limits, and the landlord has had since September, 2018 to have the procedures explained to him, but failed to do so, thereby delaying the process himself. I find that it would prejudice the tenant to adjourn the hearing and I declined to adjourn the hearing.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation provided in Section 51 of the *Residential Tenancy Act* for the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant testified that he and his girlfriend lived in the rental unit for about 5 years and had a tenancy with the previous owners for 3 years. The current landlord was the landlord for the last 2 years of the tenancy. Rent in the amount of \$850.00 per month was payable on the 1st day of each month including utilities and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00, all of which has been returned to the tenant. The rental unit is a basement suite and the landlord resides in the upper level of the home.

The tenant further testified that the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property and a copy has been provided for this hearing. It is dated July 14, 2018 and contains an effective date of vacancy of September 14, 2018. The reason for issuing it states: "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 tenant thought it was fishy because prior to that, the landlord wanted an increase and had his child interpret to the tenant that the landlord wanted \$100.00 per month more for rent. The tenant replied that the landlord could increase rent by serving the proper notice and that the increase could not be more than allowed by law.

Once receiving the Two Month Notice to End Tenancy for Landlord's Use of Property the tenant signed it and returned it to the landlord indicating that he would be moving out at the end of the month. The tenant vacated the rental unit on August 1, 2018, and the landlord returned one month's rent to the tenant along with the security deposit.

The tenant and his girlfriend have remained good friends with neighbours at the rental unit and with the previous landlords. After the tenant moved out, the previous landlord messaged the tenant asking if the tenant was moving out or what was going on, because the previous landlord had been receiving calls about the rental unit being advertised for rent.

On January 8, 2019 the tenant and girlfriend were visiting neighbours who reside next door to the rental unit, who are also friends with new tenants in the rental unit. The new tenant agreed to provide evidence for this hearing, and a note has been provided stating that the new tenant is not related to the landlord and pays \$1,100.00 per month for rent, although the landlord initially wanted \$1,300.00.

The tenant was really upset about having to move without any prior warning, and is now on a month-to-month tenancy for \$1,800.00 per month but utilities are not included. The tenant claims \$18,000.00, being 12 times the monthly rent that the tenant currently pays, and referred to a section in the Two Month Notice to End Tenancy for Landlord's Use of Property which states:

5. YOU MAY BE ENTITLED TO ADDITIONAL COMPENSATION

After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months' rent payable under your current tenancy agreement.

The tenant's witness is the tenant's girlfriend who resided in the rental unit with the tenant and was originally named as a tenant on the tenancy agreement. The witness moved out, but has continually been at the rental unit when the tenant is away for work, and to look after the dogs. Rent was payable in the amount of \$850.00 per month including utilities.

The witness testified that the tenant received an eviction notice indicating that the landlord's family was moving in. The tenant and the witness found a place right away that would allow their dog. The landlord gave a month's rent back to the tenant along with the security deposit, and the tenant moved out within 10 days. Rent at the current unit is \$1,500.00 per month, not including water, gas and hydro.

The witness also testified that the previous owners of the rental unit messaged the witness asking if the tenant was moving out because people were calling asking what the suite is like, thinking that the previous owner still owned the rental home.

The witness also testified that she is a good friend with 2 neighbours near the rental unit and the witness attends the neighbourhood often. The rental unit is currently occupied by new tenants who are Caucasian, and the landlord is not, so the witness believed there was a good chance that the new tenants are not family members of the landlord.

While visiting the neighbours next door to the rental unit, the new tenant had a discussion with the witness who confirmed that she was not related to the landlord. The witness told the new tenant that it was upsetting because she and the tenant are friends with a lot of people in the neighbourhood and did not want to move. The new tenant said she would be upset too, and agreed to provide a note confirming that she found an advertisement for the rental and moved in sometime in August or September, 2018 and pays \$1,100.00 per month, although the landlord wanted \$1,300.00 per month.

The Two Month Notice to End Tenancy for Landlord's Use of Property says that if the landlord's close family member doesn't move in, the landlord will owe the tenant a year's rent.

The landlord testified that the Notice was given because his wife's parents were going to move in from their home in Toronto but due to extenuating circumstances they couldn't make the move. The landlord's father-in-law had heart surgery, and in August, 2018 they confirmed that they would not be able to make the move, and the rental unit was already vacant. Recovery time has been unpredictable. They may still move in, but not for some time.

He also testified that the rental unit was re-rented about a month after the tenant moved out for \$1,100.00 per month, and the advertisement was posted around August 15, 2018.

When asked about raising the rent by giving a notice of rent increase, the landlord responded that he doesn't know much about the paperwork side of things.

Analysis

The tenant and the tenant's witness testified that the Two Month Notice to End Tenancy for Landlord's Use of Property states that the landlord must compensate the tenant the equivalent of 12 month's rent at the rate that the tenant currently pays if the landlord fails to use the rental unit for the purpose contained within that Notice. The information for tenants on the Notice states (underlining added):

“After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months' rent payable under your current tenancy agreement.”

The *Residential Tenancy Act* states as follows (underlining added):

Tenant's compensation: section 49 notice

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.

In this case, the parties agree that the compensation has been provided by the landlord by returning a month's rent to the tenant. However, the *Act* also states:

(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.

In this case, the landlord does not dispute that he did not use the rental unit for the purpose contained in the Notice, or that the rental unit was re-rented for a higher amount, but claims extenuating circumstances preventing the landlord from doing so, being heart surgery for the close family member that intended to move in. He also testified that he discussed with his wife's parents that they would not be able to make the move and the rental unit was already vacant, and the advertisement was posted around August 15, 2018.

The tenant testified that the landlord attempted to raise the rent during this tenancy by \$100.00 per month, contrary to the law, and the landlord did not dispute that testimony, or question it. The landlord has not provided any evidence to support extenuating circumstances. Given that the landlord clearly wanted more rent than he was entitled to, and advertised for \$450.00 per month more, and was successful in re-renting at \$250.00 more than the tenant had been paying, I am not satisfied that the landlord ever intended to have a family member move into the rental unit.

The tenant's position is that the information on the Two Month Notice to End Tenancy for Landlord's Use of Property provides for compensation in the amount of 12 times the monthly rent that the tenant currently pays. However, the *Act* states: "...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement..." That means the tenancy agreement between the landlord and tenant at the rental unit. I find that the tenant has established a claim of 12 X \$850.00, or \$10,200.00.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$10,300.00.

This order is final and binding and may be enforced.

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 29, 2019

Residential Tenancy Branch