



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONNIEHON MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord's agent ("landlord") and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to represent it at this hearing. This hearing lasted approximately 29 minutes.

A lawyer appeared on behalf of the estate of the spouse of the deceased building manager/caretaker of this rental property. Both the landlord and the male tenant confirmed that the lawyer was not required to attend this hearing because the building manager/caretaker and his spouse were not named as personal respondents or landlords in this application, only the landlord company named in this application, which the landlord was representing at this hearing. The lawyer exited the conference after being present for only five minutes at the beginning of the hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's written evidence package.

The tenants confirmed personal receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated April 24, 2018 ("2 Month Notice"), on April 30, 2018. The landlord confirmed service on the above date using the above method. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 2 Month Notice on April 30, 2018.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy ended on May 30, 2018. Monthly rent of \$1,488.00 was payable on the first day of each month. A security deposit of \$697.50 was paid by the tenants and the landlords returned the full deposit to the tenants. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord said that this tenancy began on October 1, 2014. The tenants said that their tenancy began on September 1, 2014.

The tenants seek moving expenses of \$393.75 and compensation under section 51(2) of the *Act* for twelve months of rent reimbursement of \$1,488.00, totaling \$17,856.00, plus the \$100.00 application filing fee. The tenants claim that because the landlords did not use the rental unit for the purpose on the 2 Month Notice, they are entitled to compensation. The landlord disputes the tenants' application.

Both parties agreed that the tenants vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. Both parties

agreed that the effective move-out date on the 2 Month Notice was June 30, 2018 but the tenants vacated earlier on May 30, 2018, by giving written notice to the landlord.

Both parties agreed that the reason indicated on the 2 Month Notice was:

- *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

The tenants claim that the landlord did not move a caretaker into the rental unit after they vacated. They stated that they received emails in October 2018 from two new tenants who moved into the rental unit from July to December 2018. They provided copies of these emails, noting that the new tenants were afraid of jeopardizing their tenancy if they provided letters to support the tenants' application. They said that these new tenants confirmed that they were regular tenants, they were not caretakers, and they were paying an increased rent of \$1,900.00 to the landlord during their tenancy.

The landlord stated that the rental unit was vacant for June 2018, after the tenants vacated. She claimed that the building manager/caretaker moved into the rental unit from July 1 to October 31, 2018 and then he died of a stroke, which could not be predicted, so the unit has been vacant since November 1, 2018. She maintained that she has been trying to find a new caretaker since, and she provided the advertisements and applications for a manager to live in the unit. She said that she has no knowledge if the rental unit was rented out to two new tenants, as claimed by the tenants, as she said she saw the caretaker at the building when she visited so she believed he was living there. She explained that the landlord gave the 2 Month Notice in good faith to the tenants.

Analysis

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to double the monthly rent (as per the former provision prior to May 17, 2018) if the landlords do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) stated previously:

- 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.

The tenants vacated the rental unit on May 30, 2018, pursuant to the 2 Month Notice, which was issued by the landlord for a manager/caretaker to move into the unit. Although the parties disagree as to whether the manager/caretaker lived in the rental unit, the landlord stated that the manager/caretaker only lived there for three months, not six months as noted in section 51 of the *Act*, above. The rental unit has been vacant otherwise.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as the manager/caretaker did not occupy the rental unit for at least six months after the tenants vacated on May 30, 2018.

Accordingly, I find that the tenants are entitled to double the monthly rent of \$1,488.00 as compensation under section 51 of the *Act*, which totals \$2,976.00. I find that the tenants are not entitled to 12 month's rent compensation of \$17,856.00 because the law changed on May 17, 2018. The tenants were issued the notice on April 30, 2018 and therefore, the previous law prior to May 17, 2018 applies, as noted above. This is despite the fact that the tenants vacated on May 30, 2018 and the effective date of the notice is June 30, 2018.

I dismiss the tenant's application for moving expenses of \$393.75. The receipt provided by the tenants was an email confirmation of a credit card payment. It did not indicate what location they were moved from, what date the moving occurred, how many workers were used, what rates they were paid, what was moved, or a breakdown of the tasks done.

As the tenants were mainly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$3,076.00, against the landlord. The landlord must be served with this Order as soon as possible. Should

the landlord 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: February 19, 2019

Residential Tenancy Branch