



Dispute Resolution Services

Page: 1

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 Tenant on October 15, 2018 (the "Application"). The Tenant sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant sought \$13,200.00 being 12 months of 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").

The Tenant appeared at the hearing with her husband. The Landlord appeared at the hearing with Legal Counsel. I explained the hearing process to the parties who did not have questions when asked. The Tenant, her husband and the Landlord provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant 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. Is the Tenant entitled to compensation under section 51 of the *Act*?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified that she had a verbal tenancy agreement with the previous owner of the rental unit. The Tenant testified that the tenancy started in March of 2006 and was a month-to-month tenancy. Both parties agreed the Landlord purchased the rental unit and became the landlord. The Landlord advised this occurred around the end of 2017 or beginning of 2018. Both parties agreed rent was \$1,100.00 per month at the end of the tenancy.

The parties agreed the tenancy ended June 30, 2018 pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). I reviewed the Notice submitted with the parties who confirmed it is accurate and is the Notice that was served on the Tenant. Both parties agreed the Notice was served on the Tenant in person May 11, 2018.

The Notice is dated May 11, 2018. The effective date was July 31, 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 Tenant testified above events that occurred at the rental unit after she vacated. She testified that she and her husband attended the rental unit in July and there was a construction crew renovating the rental unit. She testified that she and her husband attended August 6th and 9th and there were young males living in the basement suite. The Tenant testified that her and her husband attended the rental unit September 9th and a female in her late teens was there and came from the top floor.

The Tenant further testified as follows. She attended the rental unit September 28th and spoke with a woman who came to the door. There were approximately four teens in the upper part of the house. The woman said they moved into the rental unit in August. The woman said they are paying \$1,800.00 for the upper part of the house only. The woman confirmed she is not related to the Landlord and the Landlord does not reside at the house. The woman offered to speak to the tenants in the lower part of the house to see if they had a parcel for the Tenant. One of the teens knocked on the door to the lower suite and a male answered. The male said the tenants in the lower suite were renting rooms rather than paying rent for the whole suite. The Tenant submitted evidence of this conversation.

Legal Counsel said the Landlord intended to live in the rental unit as he and his family wanted space. The Landlord testified that he and his family did move into the rental unit. He spoke about the repairs that needed to be done and said issues arose daily that needed to be addressed. The Landlord testified that there were too many repairs needed in the basement so he lived upstairs and repaired the basement. He said his plan had been to live in the basement and re-rent the upper part of the house. The Landlord testified that there was a flood in the basement that also had to be repaired. He said he could no longer afford to live at the house. The Landlord testified that he had a young child at the time and his wife was pregnant. The Landlord testified that he had no choice but to move out of the rental unit.

The Landlord testified that he moved out of the rental unit in September. He acknowledged re-renting the rental unit around the beginning of September and immediately after he moved out.

Analysis

The Notice was served on the Tenant May 11, 2018 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,

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 Landlord acknowledged re-renting the rental unit around the beginning of September. This was less than two months after the effective date of the Notice. It is clear 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.

The Landlord testified about the reasons he and his family could no longer live at the rental unit. The Landlord's reasons for not living at the rental unit are not relevant. 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 by re-renting it within the six-month period. The Landlord must therefore pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I award the Tenant compensation in the amount of \$2,200.00 pursuant to section 51 of the *Act*.

As the Tenant was successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$2,300.00 compensation and I grant the Tenant a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenant is entitled to \$2,300.00 compensation and I grant the Tenant a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does 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: February 11, 2019

Residential Tenancy Branch