



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing documents and evidence upon each other. I confirmed the landlord received the tenant's hearing package and evidence by registered mail. I heard the landlord sent a response to the tenant via registered mail but it was returned by Canada Post because the address was incomplete. Upon further exploration of this issue, I determined that the tenant had neglected to include his unit number in providing his service address. The parties were agreeable to proceeding and the landlord's evidence would be described during the hearing so that the tenant may be afforded the opportunity to respond to it. During the hearing, I read from a transcript the landlord had included in her package. The tenant confirmed that the transcript sounded reasonably accurate and I relied upon it in making this decision.

Although this hearing took place more than two years after the tenancy ended, I determined that the tenant did file this Application for Dispute Resolution within two years of the tenancy ending and the tenant met the statutory deadline for making a claim with respect to the subject tenancy.

Issue(s) to be Decided

Has the tenant established that the landlord(s) did not occupy the rental unit within a reasonable amount of time after the tenancy ended and for at least six months? If so, is the tenant entitled to the compensation claimed against the landlord?

Background and Evidence

The parties provided consistent submissions that the tenancy started in approximately 2003 and the tenant was required to pay rent of \$1,100.00 on the first day of every month.

End of tenancy

On October 28, 2016 the landlord served the tenant with a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") with a stated effective date of January 1, 2017. The reason for ending the tenancy, as stated on the 2 Month Notice, was:

"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 did not file to dispute the 2 Month Notice and vacated the rental unit. According to the tenant, he vacated on January 1, 2017. According to the landlord the tenant did not finish moving out until January 3, 2017.

The tenant acknowledged that he did not pay rent for December 2016 as compensation payable for receiving the 2 Month Notice. The landlord was of the position the tenant did not have to pay rent for November 2016 and December 2016 due to the landlord's "kindness". The tenant stated he paid rent for November 2016. I explored this discrepancy further.

The parties provided consistent testimony that the tenant ordinarily paid rent in cash and the landlord did not issue receipts for the cash payments. In support of her position that the tenant did not pay rent for November 2016, the landlord pointed me to a transcript of a conversation she and her husband had with the tenant when the 2 Month Notice was given. Below, I have captured the relevant portions of the transcript:

Landlord: Here are the papers, and you have a choice: One (1) month free or you pay for the 2 months and I give you a check for rent.

Tenant: I would rather the month for free, if that's ok.

Landlord: Yes, of course.

Landlord's husband: OK, so that's for the month of December.

Tenant: Yes, ok.

Landlord's husband: So let's make sure you understand right. This is a Two Month Notice and just as we talked you're going to keep the last month as part of the arrangement here.

Tenant: ok

After tenancy ended

The tenant submitted that shortly after the tenancy ended the rental unit had been sold. The tenant provided a copy of a MLS listing showing the rental unit had been listed for sale during the tenancy.

The landlord acknowledged the rental unit had been listed for sale during the tenancy but then the landlord's daughter wanted to move into the rental unit so the 2 Month Notice was given to the tenant. Shortly after the tenancy ended, the landlord's daughter decided to move to another country and she did not move into the rental unit. The landlord made repairs and renovations to the rental unit and listed the property for sale again, effective February 15, 2017. An unconditional sales contract was reached on February 20, 2017 and the new owners took possession of the unit in early March 2017.

The landlord was of the position the landlord should not have to pay the tenant any more compensation because her daughter changed her mind and the landlord did not want to re-rent the unit or leave it vacant so it was put up for sale again.

The landlord submitted the tenant was usually late in paying his rent; however, I did not explore this further as it has no relevance to a 2 Month Notice.

Analysis

Section 49 of the Act provides that a landlord may end a tenancy for landlord's use of property where the landlord, or close family member of the landlord, intends in good faith to occupy the rental unit by issuing a *2 Month Notice to End Tenancy for Landlord's Use of Property*. The landlord served the tenant with such a notice under section 49 of the Act, bringing the tenancy to an end so that the landlord or the landlord's close family member could occupy the rental unit.

Where a tenancy ends under section 49 of the Act, a tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation for the tenant. First of which is compensation provided under section 51(1) that is payable to every tenant who receives a notice to end tenancy under section 49 of the Act. This compensation is equivalent to one month's rent and the tenant has received this compensation by way of withholding rent for December 2016.

As for the landlord's allegation that the tenant also withheld rent for November 2016, I find that position unsupported by any corroborating evidence such as a receipt book for the cash rent payments received from the tenant, which the landlord was obligated to give the tenant under the Act for his cash payments; and, I find the landlord's position is inconsistent with the landlord's own transcript of the conversation that took place when the landlord gave the tenant the 2 Month Notice. Therefore, the landlord did not persuade me that the tenant has already received compensation equivalent to two month's rent and it is my finding that the tenant only received the equivalent of one month's rent pursuant to section 51(1) of the Act.

The second component to compensation payable under section 51 of the Act is additional compensation payable under section 51(2) that applies where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice. At the time the subject 2 Month Notice was given, section 51(2) compensation was equivalent to two months of rent. The tenant requested compensation under section 51(2) in that amount.

At the time of giving the tenant the 2 Month Notice, section 51(2) read as follows:

- (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.

[My emphasis underlined]

In this case, it is undisputed that the landlord sold the rental unit and gave possession of the rental unit to the new owners only three months after the tenancy ended. As such, the landlord did not occupy or hold possession of the rental unit for the landlord's own use for at least six months after the tenancy ended and I find the compensation provision of section 51(2) applies in this case.

There is no exceptional circumstance that would exempt the landlord from having to pay the compensation to the tenant under section 51(2), as it was written. Accordingly, I find the landlord's description of her daughter intending to move in but changing her mind so that she could move to another country has no bearing. Had this case involved a 2 Month Notice issued after May 17, 2018 when the legislation changed, there is an exemption from having to pay the tenant additional compensation if, in the Director's opinion, extenuating circumstances prevented the landlord from using the rental unit for the stated purpose; however, the compensation provision was also greatly increased to give tenants compensation equivalent to 12 months of rent.

As for the landlord's allegation that the tenant was two days late in moving out, I would have considered taking into account additional days the tenant may have occupied the rental unit without having paid rent; however, the tenant denied occupying or leaving his possession in the unit for two additional days and I find the disputed verbal testimony alone was insufficient to prove the landlord's position.

In light of all of the above, I grant the tenant's request for compensation of \$2,200.00 pursuant to section 51(2) of the Act. I further award the tenant recovery of the \$100.00 filing fee he paid for this application. Accordingly, the tenant is provided a Monetary Order in the total amount of \$2,300.00 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the amount of \$2,300.00 to serve and enforce upon 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: February 20, 2019

Residential Tenancy Branch