



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This decision is in respect of an application for dispute resolution initiated by the tenant on November 5, 2018 against his former landlord.

The tenant argued that the landlord breached section 51 of the *Residential Tenancy Act* (the “Act”) and sought relief by way of compensation in the amount of \$15,600.00. He also sought compensation of \$100.00 for the filing fee, under section 72 of the Act.

A dispute resolution hearing was convened on March 4, 2019 and the tenant, the landlord, and an interpreter for the landlord, attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues with respect to the service of the Notice of Dispute Resolution Proceeding or documentary evidence was raised by either party.

I have reviewed all oral and documentary evidence that met the requirements of the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues are considered.

Issues

1. Is the tenant entitled to compensation under section 51 of the Act?
2. Is the tenant entitled to compensation under section 72 of the Act?

Background and Evidence

The tenant testified that the tenancy commenced on October 1, 2017 and ended in September 2018. The tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on July 16, 2018, and which indicated an end of tenancy date of September 30, 2018. A copy of the Notice was submitted into evidence.

Page two of the Notice states that the reason for the tenancy ending is that the "rental unit will be occupied by the landlord or the landlord's close family member."

The tenant also explained that given the tight rental market in the mid-Island he took a new place soon and moved out early on August 15, 2018. He eventually handed over the keys to the rental unit to the landlord on September 11, 2018, which is the date on which the tenancy ended.

The tenant testified that the landlord had bandied about the idea of either moving into the rental unit at some point or of selling it. He found a few things rather odd, before the tenancy ended, such as the landlord having his driver's license sent to the rental unit. The landlord also had the rental unit's electricity put in his name. (I note that the rental unit is a cottage situated in a picturesque, rural setting.)

About a month after he moved out, the tenant became suspicious of the landlord's stated intention of moving in. He visited the property and took pictures of the rental unit on October 16, 21, November 4, 8, 19, 29, 2018, and again on February 18, 2019. The police contacted the tenant in late December 2018 asking the tenant to stay away from the cottage. Several photographs of the rental unit were submitted into evidence. The cottage looks relatively empty, save for a couch, coffee table, refrigerator, and a few other minor things. The five photographs appear to be dated October 21, 2018 and November 4, 2018.

According to the tenant, the landlord emailed the tenant on January 29, 2019, accused him of trespassing, and offering to settle for \$500.00.

The landlord testified that when he entered into a tenancy agreement with the tenant, he had the intention of either eventually selling or moving in. He never intended to rent long term. He commented that the tenant "was a good renter."

With respect to the rental unit, the landlord testified that he was planning on taking over the rental unit, but that due to a trip to visit his mother in Poland (September 25 to November 10, 2018), he was unable to start making preparations to move into the rental

unit until he returned. Which, as the landlord's interpreter commented, explains why nothing was being done to the rental unit.

The landlord submitted that the tenant has no evidence proving that he did not intend to move in, and that "I do use it [the rental unit]" and that he is "frequently there." He considers the cottage his main home. There is preparation underway for a new shop, repairs of the fence, and of the lawn; he intends to spend the entire summer, fall and spring in the cottage. On the advice of this physician, the landlord—who is "anxious and stressed out"—is to move to the cottage's rural setting, which will be good for his health.

The parties both testified about matters concerning the parties' intentions at the start of the tenancy, and with how long they both expected the tenancy to last. However, in this application, I do not find those intentions, expectations and motivations to be material evidence in this dispute, and I will not explore that aspect of the dispute further.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Here, the tenant seeks compensation under section 51(2) of the Act which 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
- (c) 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.

The stated purpose for ending the tenancy as indicated on the Notice was that "The rental unit will be occupied by the landlord or the landlord's close family member." This language reflects section 49(3) of the Act which states that "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."

The question is, as recognized by the tenant as being crucial in this decision: what is meant by "occupy"?

"Occupy" is the verb form of the noun "occupancy," which is defined in law as "the act, state, or condition of holding, possessing, or residing in or on something; actual possession, residence, or tenancy" or "the use to which property is put" (Black's Law Dictionary, 7th ed.). In other words, occupancy does not mean to live in, in the sense of someone sleeping, eating, making meals, getting ready for work, watching Netflix, or any of our other myriad of daily activities when we reside somewhere.

Under the Act, a landlord need only occupy the rental unit for a purpose, *any* purpose, if it complies with the Act. (That is, versus renting the rental unit out to new tenants or renovating with the intent to rent, for example.)

In this case, the landlord testified that preparations were, and are underway for the rental unit to be ready for him to move into. But, again, the landlord is not required by the Act to physically reside in the rental unit. That said, I find that the landlord is in the process of moving into the rental unit.

There is no evidence before me to suggest that the landlord is not occupying the rental unit as is meant by the word "occupy." And I find that there is no evidence that the landlord has done anything with the rental unit in contravention of the Act or inconsistent with the stated purpose for ending the tenancy.

Having considered all oral and documentary evidence presented, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for compensation under section 51 of the Act.

Conclusion

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me under section 9.1 of the Act.

Dated: March 7, 2019

Residential Tenancy Branch