



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

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

- A monetary order for damages or compensation from the landlord pursuant to sections 51 and 67; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing and was represented by AL. The landlord also attended the hearing. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The tenant did not acknowledge receiving the landlord's evidence.

Preliminary Issue – landlord's evidence

Rule 3.15 of the Residential Tenancy Branch Rules of procedure provide that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. The landlord testified that she left her evidence in the tenant's mailbox on March 1, 2019. The tenant testified that there was no landlord evidence left in the mailbox on that date or afterward. She further testified that her video surveillance for March 1st indicates the landlord did not attend at her new residence on that day. I determined that it would cause unreasonable prejudice to the tenant if I were to accept evidence that the tenant did not have in her possession and in accordance with Rule 3.17, I declined to accept the landlord's evidence.

Preliminary Issue – Parties named on Tenancy Agreement

The tenancy agreement filed as evidence by the tenant shows it was signed by the single tenant shown on the cover page of this decision and no others. Although the application was filed by multiple applicants, only the tenant named on the cover page of this decision was party to the tenancy agreement and is liable for losses or capable of receiving compensation from the landlord. In accordance with Rule 6.2 I determined that the other applicants had no standing to commence an application and I dismissed their participation as applicants in this proceeding.

Issue(s) to be Decided

- Is the tenant entitled to compensation in the equivalent of two months' rent for the landlord not taking reasonable steps to achieve the purpose for which the tenancy was ended?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties entered into a tenancy agreement for an entire house. The tenancy began on April 8, 2014 as a fixed one year tenancy, becoming month to month on April 7, 2015. Rent was set at \$2,850.00 per month payable on the first day of each month and a security deposit of \$1,425.00 was returned by the landlord to the tenant when the tenancy ended. Rent was increased to \$2,920.00 in July of 2015 then to \$3,020.00 in September of 2017.

On February 16, 2018 the landlord served the tenant with a two month notice to end tenancy for landlord's use of property ("Notice"). The effective (move-out) date on the Notice was May 1, 2018. The following reason for the two month notice was selected: **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 served notice to the landlord that she would be leaving the rental unit on April 11, 2018. After moving out of the house and into another one in the same neighbourhood, the tenant noticed the house remained vacant. On May 20, 2018 the tenant received a text message from the landlord which reads:

Hi [tenant's name] our plan to use the house ourselves has change because my brother decided to not to move back to [city]. We plan to rent the place out can we negotiate compensation for you guys?

The tenants responded on May 22, 2018 asking for reaffirmation the landlord and her family were going to move in, but no response was received until June 13, 2018 where the landlord says:

We are going to renovate not renting it out.

A copy of the text message exchange was provided as evidence by the tenant.

Between June 2018 and November 2018 renovations were undertaken. Before and after photographs of the house were provided by the tenant as evidence. On February 22, 2019 the tenant went to the house to collect mail and spoke with the new tenant in the house who confirmed they were not related to the landlord.

The landlord testified that when she served the Notice and gave the tenant compensation in the amount of one month's rent, she planned on renovating the house then moving in with her family. The landlord and her spouse were undergoing marital discord and were undergoing counselling during the time she issued the Notice to the tenant. As counselling was proceeding, renovations fell through, leading to the house remaining vacant for a long period following the tenant moving out. The landlord was uncertain whether she and her family were going to move in. The landlord testified she and her spouse are currently in the midst of divorce proceedings and until the divorce is final, she cannot move in. She has spent over \$300,000.00 on renovations to the house to make it suitable for herself and her children; in the meantime, in December of 2018 she found a tenant willing to rent it out month to month.

The landlord testified that when she served the Notice, her intention was genuine. She wouldn't have spent \$300,000.00 to renovate the house for tenants, it was done for the benefit of herself and her family.

Analysis

Section 51(1) of the *Act* states:

If 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 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, 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.

Residential Tenancy Policy Guideline PG-50 [Compensation for Ending a Tenancy] clarifies the landlord's requirements when ending a tenancy for landlord's use. (reproduced below).

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

I am satisfied based on the evidence before me and the testimony provided by the parties that the landlord did not use the rental unit for the purpose stated in the Notice. While the landlord may have eventually intended to move in, she did not dispute the tenant's evidence that the house was left vacant for several months after the tenants moved out. The landlord testified that rather than moving in, the house was left vacant before undergoing extensive renovations. The stated purpose of the Notice (landlord moving in) was not achieved within a reasonable period. As such, the tenants are entitled to a monetary award under the *Act*.

The Notice was given to the tenant on February 16, 2018, before section 51 of the Residential Tenancy Act was amended to allow tenants to seek compensation in the amount of the equivalent of 12 months' rent. I award the tenant compensation according to section 51 the *Act* in effect on February 16, 2018, namely the equivalent of two months' rent at \$3,020.00 per month for a total of \$6,040.00.

As the tenant's application was successful, the tenant is entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

I issue the tenant a monetary award in the amount of **\$6,140.00**. 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: March 18, 2019

Residential Tenancy Branch