



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed November 11, 2018, wherein the Tenant sought the sum of \$32,400.00 in monetary compensation from the Landlord pursuant to section 51(2) of the *Act* as well as recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on March 22, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Residential Tenancy Act*?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that her tenancy began December 15, 2015. Monthly rent was payable in the amount of \$2,700.00 and the Tenant paid a \$1,350.00 security deposit and a \$1,350.00 pet damage deposit.

The Tenant received a 2 Month Notice to End Tenancy for Landlord's Use on April 26, 2018. A copy of that Notice was provided in evidence before me and which indicated the reasons for ending the tenancy as follows:

☒ 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).

By way of Decision dated June 27, 2018 the Landlord obtained an Order of Possession of the rental unit. The file number for that matter is included on the unpublished cover page of this my Decision.

The Tenant testified that she moved from the rental unit at the end of June 2018.

The Tenant confirmed that she did not apply for Review Consideration of the June 27, 2018 Decision and Order of Possession granted to the Landlord.

The Tenant confirmed she did not pay rent for June 2018, and further stated that she believes that her security deposit and pet damage deposit should be used for her June 2018 rent.

In terms of the application before me, the Tenant stated that she does not believe the Landlord used the rental property for the stated purpose as at the time she applied for dispute resolution at the end of November 28, 2018, the rental unit remained vacant. The Tenant confirmed that to her knowledge the rental unit remains vacant as of the date of the hearing. The Tenant confirmed that to her knowledge the rental unit has not

been rented to others. She argued that as the Landlord has not resided in the rental unit, it has not been occupied as was stated on the Notice to End Tenancy.

In response to the Tenant's claim, the Landlord's spouse, T.X., testified as follows.

She stated that the Tenant moved out of the rental property at the end of June 2018. T.X. further stated that they did renovations to the rental unit and then moved in at the end of December 2018. Introduced in evidence were invoices confirming the cosmetic renovations which were done to the rental unit after the tenancy ended.

T.X. also confirmed that she underwent surgery in September of 2018 such that she was not able to move heavy things at the time. She also provided documentary evidence confirming this surgery.

Finally, T.X. stated that they have not rented the rental unit to others and that it was always their intention to move into the unit.

Analysis

On the Application for Dispute the Tenant indicated she sought the sum of \$32,400.00 in monetary compensation representing compensation equivalent to 12 month's rent.

Bill 12 introduced changes to section 51(2) of the *Residential Tenancy Act* and was given Royal Assent on May 17, 2018. The current version of section 51(2) provides that a tenant is entitled to *12 months* compensation, as opposed to 2 months.

However as the Notice was issued on April 26, 2018, *prior to* May 17, 2018, the Tenant in the case before me is only entitled to compensation based on the former version of section 51(2); that is, a maximum of 2 month's rent.

At the time the Notice was issued sections 49 and 51(2) read as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the [Strata Property Act](#);
- (d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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 issued the Notice pursuant to section 49(3). Notably, section 49(3) uses the word “occupy” not “reside” or “live in”. Meaning must be given to the words actually used in the legislation. “Occupy” and “reside” have different meanings. Since the *Act* does not require the Landlord to “reside” in the rental unit, whether the Landlord actually resided or lived in the rental unit is not relevant.

The *Act* does not define the word “occupy” or “occupied”. Black’s Law Dictionary defines “occupy” as “to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession.”

Based upon the evidence before me, I find that no other person took possession of the rental unit from the Landlord following the issuance of the Notice. Since no other person took possession of the rental unit for nearly a year after the tenancy ended, I am satisfied that the Landlord *occupied* the rental unit for at least six months starting June 26, 2018 (the effective date of the Notice).

I find the landlord fulfilled the stated purpose on the 2 Month Notice such that I find the Tenant is not entitled to compensation under section 51(2). Therefore, I dismiss her claim against the Landlord.

The Landlord submitted photos of the rental unit alleging the Tenant left the rental unit damaged and unclean at the end of the tenancy. The Landlord was reminded that they cannot make a monetary claim through the Tenant’s Application and they must make their own claim by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant confirmed that she had yet to provide the Landlord with her forwarding address in writing.

The parties are reminded to consider the requirements of sections 24, 36, 38 and 39 of the *Act* as they related to the Tenant's security and pet damage deposits.

Conclusion

The Tenant's claim for monetary compensation pursuant to section 51(2) of the *Act* is dismissed.

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 22, 2019

Residential Tenancy Branch