



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

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

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- more time to make an application to cancel the landlord's Two Month Notice pursuant to section 66;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application (including the amended application) and evidence submissions on file.

The tenant had originally applied to dispute a Two Month Notice but later amended her application as she vacated the rental unit. The only issue at hand is the tenant's amended application for monetary compensation.

Issues

Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The tenancy began December 1, 2017. The rental unit is an entire residential house. The monthly rent was \$2200.00.

On January 5, 2019, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of February 28, 2019. The notice was issued on the grounds that the landlord's or a close family member intended to occupy the rental unit.

The tenant is claiming an amount equivalent to twelve times the monthly rent of \$2200.00/month as compensation for the landlord not using the rental property for his own use after issuing the Two Month Notice.

The tenant testified that on December 4, 2018 the landlord contacted her via text message to talk about a rent increase. The landlord subsequently attempted to increase the rent to \$2500.00 per month which the tenant did not agree to. The landlord then served the tenant with the Two Month Notice on January 5, 2019. The tenant submitted a craigslist posting dated January 31, 2019 advertising the rental unit for rent. The tenant testified the landlord even contacted her to set up a showing for the unit to prospective tenants.

The landlord submits that there are two owners of the rental property and that the second owner had listed her personal residence for sale in October 2018. The second owner was intending to sell her home and move into the rental unit with her family. The second owner decided to take her house off the market at the end of January 2019 as the market was slow. The second owner advised the landlord that she would no longer be moving into the rental unit. The landlord submits that he approached the tenant to advise her that she could continue residing in the unit but the tenant had already secured alternative accommodation. The landlord then advertised the home for rent. The landlord argues he had a good faith intention to occupy the rental unit but the circumstances changed.

The tenant disputes being contacted with a request to continue the tenancy after the Two Month Notice was issued.

Analysis

Section 51 (2) of the Act provides that 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Pursuant to section 51(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
- (b) 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.

There was no dispute that the landlord did not accomplish the stated purpose for ending the tenancy after the effective date of the Two Month Notice. I find the argument put forward by the landlord as to why he was not able to accomplish the stated purpose for ending the tenancy is not an extenuating circumstance. It was the landlord's choice to serve the Two Month Notice hastily before any sale of the secondary owner's home was completed. The tenant had no choice but to secure alternative accommodation as a result of being issued the Two Month Notice. The tenant was under no obligation to agree to the landlord's alleged attempt to rescind the Two Month Notice after it was issued. The landlord must now bear the consequences.

I allow the tenants claim for an amount equivalent to twelve times the monthly rent and award an amount of \$26,400.00 which is double the monthly rent of \$2200.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$26,500.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$26,500.00. 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 22, 2019

Residential Tenancy Branch