



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation, for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The initial hearing took place on February 1, 2019 and was reconvened to be heard on March 19, 2019. An agent for the Tenant (the “Agent”) and the purchaser/Landlord (the “Landlord”) were present for both teleconference hearings. The Landlord also had a witness attend the reconvened hearing to present testimony.

At the reconvened hearing, the parties confirmed that they had received the evidence of the other party.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions, call witnesses and question the other party.

Preliminary Matters

The Tenant applied for the return of the security deposit. However, the Landlord confirmed that since the tenancy had ended before she took possession of the home, the previous owner did not transfer the security deposit to them. Therefore, I find that a claim for the return of the security deposit should be made against the previous home owner who was the landlord during the tenancy. Accordingly, the Tenant’s claim for the return of the security deposit is dismissed, with leave to reapply.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were unsure as to the details of the tenancy. However, both parties agreed that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on or around May 20, 2018.

The Two Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit

The Two Month Notice states that it was served to the Tenant in person on May 22, 2018 and states the effective end of tenancy date as July 31, 2018. The Agent stated that the Tenant moved out on July 15, 2018, before the effective date of the Two Month Notice.

The Landlord confirmed that she purchased the home and asked the previous owner to serve the Two Month Notice to the Tenants at the time due to planning to move into the home with her family. The Landlord stated that she took possession of the home in August 2018.

The Tenant has applied for compensation in the amount of \$7,800.00 which is the equivalent of 12 months of rent at \$650.00 per month, as well as \$189.00 as compensation for private investigation services. The Tenant submitted a rent receipt signed by the previous landlord/home owner stating that the Tenant paid \$650.00 per month in rent for 2017 and 2018.

The Agent stated that the application was made due to the Tenant finding out that the Landlord did not occupy the rental unit as stated as the purpose for the Two Month Notice and instead rented the unit to new tenants.

The Agent provided testimony that she had a private investigator attend the home in September and October 2018 to find out who the current home owner was and to obtain contact information. The investigation report dated October 23, 2018 was submitted into evidence and states that the investigator attended the home on two occasions and

spoke to current tenants in the home. The reports states that the tenants the investigator spoke to stated that they were not family members of the Landlord and provided contact information for their landlord.

The Agent has claimed the fee for this service in the amount of \$189.00 and stated that this was for two hours of work plus tax.

The Tenant also submitted the title search for the property stating that Landlord S.D. is the current owner. The Landlord confirmed that she owns the home.

The Landlord testified that in April 2018 she decided to purchase a home that her family would be able to live in as well. The Landlord stated that her parents contributed money towards the purchase of the home given that it was more than she was initially intending to spend and was now going to be for their use as well.

The Landlord stated that her sister uses a wheelchair due to a longstanding medical condition. She stated that due to this, they viewed the home for accessibility and as it contained a wheelchair ramp to the lower level they decided that this would work. The Landlord provided testimony that they measured the wheelchair ramp and it was the correct measurements for her sister's wheelchair. The Landlord stated that an outdoor wheelchair lift was expensive, but that they would save for a year or two and eventually purchase this to provide access to the entire home for her sister. In the meantime, the Landlord's sister would be able to access the lower level of the home through the existing ramp. The Landlord submitted a quote for a wheelchair lift dated April 16, 2018 stating that a lift would be approximately \$20,000.00.

The Landlord stated that at first her sister was fine with residing in the lower level of the home and was willing to move with the rest of the family to the new home. However, the Landlord stated that around August 3, 2018 after the final inspection of the home before possession, her sister informed her that she was not willing to be restricted to the lower level of the home and therefore did not want to move. The Landlord testified that she stayed at the home for a few weeks, but when she realized that it wouldn't work for her whole family to move there, decided to rent out the two lower level units, as well as the upstairs of the home. The Landlord stated that one of the lower level tenants moved in on August 28, 2018 and the other moved in on September 14, 2018. The Landlord stated that the upstairs of the home was rented in October 2018 as she was first considering whether she could move upstairs on her own.

The Landlord's sister attended the hearing as a witness and confirmed that she was initially fine with moving into the new home but changed her mind as she was not sure how it would be to reside on the lower level of the home away from her other family members. The witness stated that she was confused about this decision and not sure why she did not inform her sister until later that she was nervous and unsure of the decision to move.

The Landlord stated that she tried to convince her sister to move by renovating the lower level area which was confirmed by her sister. The Landlord submitted photos of the rental unit as well as photos of their current home and explained that they would have liked to move to the new home as it has more space for their family.

The Landlord testified that she had no control over the decision to not move into the rental unit due to her sister's change of mind, despite the Landlord's intentions to move into the rental unit with her family. The Landlord stated that she was not aware of the rent amounts the previous tenants were paying and did not purchase the home as a rental investment or request a Two Month Notice to be served due to wanting to increase the rent.

The Agent stated that the Landlord completed the purchase of sale of the home in April 2018 and had until she took possession in August 2018 to secure financing for a wheelchair lift outside the home if needed. The Agent also stated that her belief that the Landlord purchased the home with the intention to rent out the units as an investment.

Analysis

The parties were in agreement that a Two Month Notice was served to the Tenant as per the Landlord's request pursuant to Section 49(5) of the *Act* due to purchasing the home and intending for herself or a close family member to occupy the home.

Section 51(2) of the *Act* states the following:

- (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.

However, Section 51(3) of the *Act* states that the landlord or purchaser may be excused if there were extenuating circumstances in place that prevented them from using the rental unit for the stated purpose of the notice to end tenancy. *Residential Tenancy Policy Guideline 50: Compensation for Ending a Tenancy* states that an extenuating circumstance would be a circumstance where it would be unreasonable and unjust for a landlord to pay compensation such as a parent intending to move occupy the rental unit but passing away. Policy Guideline 50 further states that a landlord changing their mind about occupying the rental unit may not be an extenuating circumstance.

Based on the testimony and evidence of both parties, I find that the situation with the Landlord/purchaser of the home was that she changed her mind. I accept that the Landlord purchased the home with the intent to move in with her family, however, as she did not do so due to a family member changing their mind, I do not find that extenuating circumstances were in place that were beyond the control of the Landlord.

At the time of purchasing the home the Landlord had plans to reside there with her family. I find that the Landlord was aware at this time that in order to reside in the home it would need to be accessible for one of her family members and purchased the home knowing that there was no wheelchair lift and only a wheelchair ramp to the lower level of the home.

I also note that Section 49(1) of the *Act* provides a definition of 'close family member' as the following:

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;

Accordingly, a sister of the Landlord/purchaser is not considered a close family member under the *Act*. However, as the Landlord or a close family member did not occupy the home due to a change of mind, I do not find that extenuating circumstances exist in which the Landlord should be excused from their responsibilities under Section 51 of the *Act*.

Therefore, I find that Section 51(2) of the *Act* applies as the purchaser did not take reasonable steps to accomplish the stated purpose for ending the tenancy and instead rented the home within a month or two of the tenancy ending. I accept the rent receipt submitted into evidence signed by the previous Landlord which establishes that rent in 2017 and 2018 was \$650.00 per month and therefore award the Tenant compensation in the amount of \$7,800.00, the equivalent of 12 months of rent.

As for the Tenant's claim for compensation for private investigation services, I decline to award this amount. Although the Agent stated that this cost was incurred through trying to locate the current contact information for the Landlord and that the previous landlord did not have this information, I do not find sufficient evidence to determine that this cost was incurred due to a breach of the *Act* by the Landlord. I have insufficient evidence before me to determine that the purchaser was not still residing at the home listed as their address on the Two Month Notice or that the Tenant needed to hire a private investigator to attend the rental unit to find this information.

As the Tenant's application had merit, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant is granted a Monetary Order in the amount of \$7,900.00.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$7,900.00**. The Tenant is provided with this Order in the above terms and 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: April 2, 2019

Residential Tenancy Branch