



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- a monetary order pursuant to section 67 of the *Act*.

The tenant, landlord A.H. and the landlord’s agent, J.C. all attended the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant said she served her application for dispute and evidentiary package in person on December 7, 2018. The landlord acknowledged receipt of these documents and is found to have been duly served in accordance with the *Act*. The landlord said he sent a copy of his evidentiary package to the tenant by way of Canada Post Registered Mail on March 15, 2019 but that this package was returned. I am satisfied the landlord took all necessary steps to serve the tenant in accordance with the *Act* and deem the tenant served pursuant to sections 88 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Background and Evidence

The tenant explained this tenancy began in September 2012. Rent was \$750.00 per month and rose to \$776.00 per month over the course of the tenancy. The tenant’s \$325.00 security deposit was returned at the end of the tenancy. The tenant said she was served with a 2 Month Notice to End Tenancy in June 2018 and that she vacated the property in September 2018 following the issuance of the 2 Month Notice.

The tenant sought a monetary award of \$9,312.00 representing a return of rent x 12 pursuant to section 51 of the *Act*, along with expenses related to moving and increased rental rates in her new unit. The tenant alleged the landlords had not fulfilled their duty pursuant to section 51 of the *Act* which states, “the landlord must pay the tenant an

amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the rental unit is not used for that stated purpose for at least 6 months' duration." The tenant argued the landlord moved their son into the rental unit for September 1, 2018, who then promptly moved out and re-rented the unit to other persons in November 2018.

The landlords acknowledged their son had taken in new occupants but maintained he continued to live in the premises. The landlords said the unit was too large for a single person to occupy and that it did not make sense for only one person to live in the unit. The landlords said their son took in three roommates. As part of their evidentiary package the landlords produced a letter signed by themselves which stated as follows, "This is to confirm that our son A.H. has been residing in the basement since September 2018...The basement living space is 1,300 square feet, which is too larger (sic) living a space for a single person. As a result our son also has subletted the basement to 3 other students since of November 2018."

Analysis

Section 51 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."

I am satisfied based on the evidence before me and the testimony provided by the tenant that the landlords did not use the rental unit for the purpose stated in the 2 Month Notice to End Tenancy. I accept the tenant's testimony that the landlords' son briefly occupied the suite and then sublet the suite to other persons. The landlord testified during the hearing that the suite in question was too large for one person to occupy. I find this argument unreasonable, as the landlords would have known the size of the suite prior to their son's occupation of the unit and it would not have been a surprise to discover it too large for one person to occupy. I find the son's actions in re-renting/subletting the suite to various persons to fall beyond the scope of Landlord's Use, while the son did occupy the suite, I find the landlords had ulterior motivations behind the issuance of the 2 Month Notice to End Tenancy. Furthermore, the landlords son did not attend the hearing to provide any context or information about his use of the suite, and the letter produced by the landlords was signed by themselves, not their son, therefore further lending credibility to the tenant's assertion that the suite was not used for the purposes stated on the 2 Month Notice.

Pursuant to section 51 of the *Act*, I find that the tenant is entitled to a monetary order in reflection to the landlords' violation of the *Act*, in this case twice the monthly rent of \$776.00. I decline to award any damages related to moving costs or other expenses. The tenant produced no evidence in support of these claims.

While the tenant is correct in her argument that a landlord who does not use the rental unit for its stated purpose after the issuance of a 2 Month Notice must pay a tenant a monetary award equivalent to 12 month's rent, I note that this legislation came into force on May 17, 2018 and is not retroactive. The tenants received their Notice to End Tenancy in March 2018 and therefore their application will be considered under the legislation in place prior to May 17, 2018.

Conclusion

I issue a Monetary Order in the tenants favour in the amount of \$1,552.00 against the landlord. The tenants are provided with a Monetary 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.

Item	<u>Amount</u>
Penalty for 2 month notice (2 x \$776.00)	\$1,552.00
Total =	\$1,552.00

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