



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss pursuant to sections 67 and section 51(2) of the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that they received copies of the tenant's dispute resolution hearing package and written evidence package sent by the tenant by registered mail on December 15, 2018, I find that the landlord was duly served with this material in accordance with sections 88 and 89 of the *Act*. The landlord confirmed that they did not provide any written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the monthly rent pursuant to the provisions of section 51(2) of the *Act* as a result of the landlord's failure to occupy the rental unit for the purposes stated in the 2 Month Notice? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On November 16, 2016, the tenant and the previous landlord signed a one-year fixed term tenancy agreement that was to run from December 1, 2016 until November 30, 2017. Monthly rent was set at \$1,650.00, payable in advance on the first of each month.

The 2 Month Notice issued by a representative of the previous landlord was entered into written evidence by the tenant. This Notice identified the following reason for seeking an end to this tenancy by November 30, 2017.

- *All of the conditions for 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.*

At the hearing, the landlord confirmed that they had advised the previous landlord that they intended in good faith to occupy the rental unit after the purchase of the property was finalized. At that time, the landlord said that they were living with their female friend, who had only relatively recently returned to Canada following a lengthy absence abroad to care for her ailing father. During the period between the landlord's decision to purchase the property where the tenant was residing and the effective date of the 2 Month Notice, the landlord said that circumstances between the two changed to the extent that the landlord and his female friend decided to get married. They remained living in their shared accommodations. The landlord testified that the wedding occurred in May 2018.

At the time, the 2 Month Notice was issued, the landlord claimed that he had every intention of moving into the tenant's rental unit. The landlord asserted that these changed circumstances were sufficient to release the landlord from the requirement that he move into the rental unit in accordance with the reasons stated on the 2 Month Notice. The landlord confirmed that once the decision to get married had been made and to stay living together in their fiancée's accommodations, the landlord sought another tenant to move into the rental unit. By that time, the tenant had already found alternate accommodations and vacated the rental unit by November 20, 2017.

The tenant applied for a monetary award of \$3,300.00, the equivalent of two month's rent, as the tenant maintained that the landlord had not fulfilled the requirements of section 51(2) of the *Act*, as the landlord had failed to move into the rental unit and

rented it out to another tenant for more monthly rent than the tenant had been paying. The tenant also applied to recover their \$100.00 filing fee.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 49(5) of the *Act* provides the statutory authority whereby a landlord who is purchasing a property containing a rental unit may end a tenancy for landlord's use of the property under the following circumstances:

- *All of the conditions for 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.*

As noted below, section 51(2) of the *Act* outlines the tenant's eligibility for compensation after receipt of the 2 Month Notice from the landlord:

- 51** *(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...*

At the hearing, the landlord confirmed that they instructed the previous landlord as a condition of the purchase of this property that they needed the tenant's rental unit

vacated in order to live there. Once the 2 Month Notice was issued and received by the tenant on September 25, 2017, the tenant was eligible for compensation pursuant to section 51(2) of the *Act*. Issuing a 2 Month Notice requires a tenant to relocate for reasons that are not of their own making, in this case, at the end of their one-year fixed term tenancy. Landlords need to be very certain that their plans are finalized before a 2 Month Notice is issued in order to avoid receiving a claim for monetary compensation pursuant to section 51(2) of the *Act* from tenants who are forced to move as a result of a 2 Month Notice.

In this case, the tenant provided undisputed written evidence that the landlord was already attempting to re-rent the premises for a monthly amount \$150.00 more than the tenant was paying even before the November 30, 2017 effective date when the 2 Month Notice was to have taken effect. At the hearing and in the copies of emails exchanged between the parties, entered into written evidence by the tenant, the landlord maintained that between the time the landlord instructed the previous landlord to issue the 2 Month Notice and when the tenancy was scheduled to end, the landlord's circumstances changed because the landlord made plans to marry and remain living in the accommodations he then shared with his partner. However, at the hearing, the landlord said that this decision to marry occurred sometime in September or October 2017. While the decision to get married was made at that time, the landlord also testified that the wedding did not actually happen until May 2018.

Although I have given the landlord's testimony careful consideration, I find that there is undisputed evidence that the landlord did not take steps to accomplish the stated purpose for ending the tenancy as set out in the 2 Month Notice, nor did the landlord use the tenant's rental unit for that stated purpose for at least 6 months. Even before the tenancy ended the landlord was advertising for tenants at a monthly rate that was in excess of the legal rent that the landlord could have charged the existing tenant. The landlord testified that the \$1,800.00 in monthly rent obtained from the new tenant was not significantly more than the amount the landlord could have legally charged the Applicant in this hearing had the 3.7 % annual increase been charged to the Applicant. I note that the landlord would have had to have waited for at least three months to obtain more than the \$1,650.00 the Applicant was paying in monthly rent, as no Notice of Rent Increase on Residential Tenancy Branch approved forms had been issued to the Applicant. While the landlord may very well have decided to get married between the time the 2 Month Notice was issued and the end of this tenancy, this has little bearing on the issue before me, the landlord's failure to accomplish the stated purpose for ending the tenancy or for using it for that purpose for at least six months. Under the

circumstances, I find that the tenant is entitled to a monetary award pursuant to both paragraph 51(2(a) and (b) of the *Act*.

For these reasons, I allow the tenant's application for a monetary award of \$3,300.00 pursuant to section 51(2) of the *Act* as I conclude that the landlord has not used the rental unit for the reason stated in the 2 Month Notice. Since the tenant was successful in this application, I also allow the tenant to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$3,400.00, which allows the tenant to recover the equivalent of two month's rent and the filing fee for this application.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 02, 2019

Residential Tenancy Branch