



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with a tenant's application for a Monetary Order for compensation payable to a tenant where the landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property* issued by the landlord, as provided under section 51(2) of the Act.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. The tenant did not appear at the hearing. I heard that she does not speak English. The tenant's daughter provided direct testimony as to events that occurred during and after the testimony.

At the outset of the hearing, I confirmed the tenant's hearing package, including evidence, was served upon the landlord via registered mail and the documents were received by the landlord. I confirmed that the landlord did not submit/serve any documentation in response to the tenant's claim and the landlord's agent intended to present the landlord's response orally during the hearing.

The tenant's advocate acknowledged that a mathematical error was made in filing the Application and the amount of compensation sought should read \$2,000.00. Since this amount is less than that indicated on the Application, I amended the Application accordingly as doing so is beneficial for the respondent.

Issue(s) to be Decided

Is the tenant entitled to compensation payable under section 51(2) of the Act in the amount claimed, as amended?

Background and Evidence

The rental unit was described as a laneway house. Also on the residential property are the main house and a basement suite. Each of the three living units is owned by an individual and identified with its own unique street number.

The subject tenancy started in October 2014 and the rent was set at \$1,000.00 payable on the first day of every month.

On March 20, 2018 the landlord posted a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") on the door of the rental unit. The 2 Month Notice has a stated effective date of May 31, 2018 and the reason for ending the tenancy is stated as:

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).

The tenant's daughter testified that she spoke with the owner of the property after the 2 Month Notice was received while the tenant was still residing at the rental unit and asked the owner why the 2 Month Notice was issued. The tenant's daughter testified that the owner stated that she or her daughter would be moving into the rental unit. The tenant accepted that the owner or her daughter would be moving in to the rental unit and did not file to dispute the 2 Month Notice.

On March 26, 2018 the tenant gave the landlord 10 days of notice that she would be vacating the rental unit effective April 5, 2018. The tenant did return vacant possession on or before April 5, 2018. The tenant did not pay rent for April 2018 and the landlord provided a refund of \$833.33 in addition to the five days of free rent as compensation payable to the tenant for receiving the 2 Month Notice.

The tenant's daughter testified that after the tenancy ended she returned to the property every few weeks to check for mail for their family. The tenant's daughter testified that in August 2018 she spoke with other tenants living in another unit on the property and she enquired as to who was residing in the rental unit to which they said the owner's uncle was living in the rental unit. Then in September 2018 she returned to the property again and observed a family with children in the rental unit. In October 2018 she returned to the property again and found mail addressed to a person that is not the name of the

owner at the rental unit address. The tenant provided a photograph of the mail including the name of the person and the rental unit address.

In conducting research for this case, the tenant's advocate located an advertisement for the rental unit showing an availability date of "Sep 1" at the monthly rent of \$1,300.00. The advocate also provided the ownership information for the property obtained from BC Assessment.

The landlord's agent testified that he had been managing the rental of the rental unit and the basement suite on the property since August 2014. The landlord's agent stated that the advertisement provided by the tenant's advocate is the advertisement posted on the landlord's website prior to the subject tenancy. The agent pointed out that the rental unit did not rent for \$1,300.00 per month so the rent was reduced and that resulted in the formation of the subject tenancy shortly thereafter.

The landlord's agent confirmed that it was he who issued and served the 2 Month Notice and testified that the owner instructed him to issue the 2 Month Notice so that she may occupy the unit.

The landlord's agent testified that his management contract terminated when this tenancy ended. The landlord's agent acknowledged that he had a written management contract with the owner but that he did not have anything in writing terminating the contract since an oral request or text message is often acceptable. The landlord's agent stated that he was compensated for his work by way of a portion of the rent collected. Since rent was not paid in the last month he did not receive compensation for the last month of the tenancy.

After receiving the tenant's hearing documents, the landlord's agent spoke with the owner to determine what the rental unit was used for after the tenancy ended. The landlord's agent testified that the owner told him that her "relatives" used the rental unit for a period of time and then it remained vacant. No other specifics with respect to the identity of the "relatives" or the period of time they were occupying the rental unit were provided to me. Nor, was the owner called to testify or otherwise provide a sworn affidavit for these proceedings

The landlord's agent stated that the owner agreed to reimburse the agent should a decision be made in favour of the tenant.

Analysis

It is undisputed that the landlord brought this tenancy to an end by way of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued under section 49 of the Act. Where a tenancy is brought to an end by way of a 2 Month Notice, the tenant is entitled to compensation, as provided under section 51 of the Act.

Where a tenant receives a 2 Month Notice, the tenant is permitted to end the tenancy earlier than the stated effective date by giving the landlord 10 days of written notice and ending the tenancy early does not affect the tenant's right to compensation payable under section 51 of the Act. In this case, the tenant gave the landlord 10 days of notice to end the tenancy on April 5, 2018 which was within her right to do without affecting her right to compensation.

The compensation provisions of section 51 include compensation equivalent to one month of rent for receiving the 2 Month Notice, as provided under section 51(1). This compensation may come in the form of free rent for the last month of tenancy, a refund by the landlord at the end of the tenancy, or a combination of both. In this case, the tenant received this compensation, as required, in the form of a combination of free rent for five days and a cheque for the balance to reach the equivalent of a month's rent.

By way of this application, the tenant is seeking additional compensation that is payable in certain circumstances, as provided under section 51(2) of the Act. Section 51(2) provided the following, at the time the subject 2 Month Notice was issued:

(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...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis underlined]

In this case, the landlord indicated the reason for ending the tenancy was so that the owner or the owner's close family member could occupy the rental unit. In order to avoid paying the tenant additional compensation under section 51(2) I would have to be satisfied that the rental unit was occupied by the owner or the owner's close family member starting within a reasonable time after the tenancy ended on April 5, 2018 and for at least six months after that. Accordingly, the rental unit may not be occupied by people other than the owner or owner's close family member until at least October 5, 2018 or later to avoid paying additional compensation to the tenant.

In returning to the property periodically after the tenancy ended, the tenant's daughter had seen and heard information that I accept would lead a person to conclude the rental unit was not being occupied by the owner or owner's close family member during the six months after the tenancy ended.

Very little evidence was provided to contradict the tenant's assertion that the owner did not use the rental unit for the purpose stated on the 2 Month Notice. Rather, the landlord's agent was only able to describe the landlord's "relatives" having been occupying the rental unit for a period of time. The nature of the relationship was not provided to me and the period of time those person(s) were occupying the rental unit was not specified. Nor, was any explanation provided by the landlord as to the relationship of the person identified on the mail sent to the rental unit after the tenancy ended.

Even if the owner's "relatives" were occupying the rental unit after the tenancy ended, only certain relationships meet the definition of "close family member". As defined in section 49 of the Act, a "close family member" is:

"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;

The landlord's agent did not indicate that the person(s) occupying the rental unit were either: the owner's spouse, parent or child or the parent or child of the owner's spouse. Other relationships such as aunt, uncle, cousin, sibling and the like do not meet the definition of "close family member" for purposes of section 49 of the Act.

In light of all of the above, I find, on the balance of probabilities that the rental unit was not occupied by the owner or owner's close family member starting within a reasonable

amount of time after the tenancy ended and for at least six months after the tenancy ended. Therefore, I find the tenant entitled to compensation equivalent to two months of rent, or \$2,000.00.

Provided to the tenant is a Monetary Order in the amount of \$2,000.00 to serve and enforce upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an order of the court.

Conclusion

The tenant is provided a Monetary Order in the amount of \$2,000.00 to serve and enforce upon the landlord.

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: May 08, 2019

Residential Tenancy Branch