



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 23, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing with S.D. to assist. The Landlord appeared at the hearing with L.S. to assist. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought \$6,000.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) for the Landlord failing to follow through with the stated purpose of a Two Month Notice issued to her during the tenancy.

The Tenant testified that there was a verbal tenancy agreement between her and the Landlord in relation to the rental unit. The Landlord testified that the agreement was written. The Tenant testified that the tenancy started December of 2017. The Landlord did not know when the tenancy started but agreed it could have been December of 2017. The Tenant later said the tenancy started December of 2016. Both parties agreed the tenancy was a month-to-month tenancy and rent was \$500.00 per month due on the first day of each month.

A copy of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) was submitted as evidence. It is addressed to the Tenant and another individual. It is dated October 23, 2018 with an effective date of December 31, 2018. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord’s close family member.

Both parties agreed the Notice was served on the Tenant October 23, 2018.

The Tenant and S.D. testified as follows.

The Landlord is not living in the rental unit. C.R. is living in the rental unit and is not related to the Landlord. C.R. started residing at the rental unit in January. C.R. is the son of T.R. T.R. told the tenants prior to them moving out that his son was going to be renting the unit. T.R. later confirmed his son had moved into the rental unit. They found a posting on social media showing C.R. sold his house in another city and bought a truck with his father, T.R., which lined up with what T.R. had told the tenants. They contacted C.R. through social media and he confirmed he is living at the rental unit although stated that he is the Landlord’s roommate. A realtor involved told the tenants C.R. is house sitting for the Landlord. A different realtor in town told the tenants that C.R. came to their office to sign a lease for the rental unit.

The Tenant submitted a signed statement from the co-tenant stating he spoke to T.R. January 20, 2019 and T.R. confirmed his son is renting the rental unit.

The Tenant submitted an email from the first realtor involved stating he was told C.R. is a roommate of the Landlord's.

The Tenant submitted a message from C.R. stating he is house sitting for the Landlord.

The Tenant submitted text messages about C.R. going to the wrong office to sign a lease agreement in December.

The Landlord testified as follows.

He agrees C.R. has been living full time at the rental unit since the first week of January. He is not related to C.R. He does not have a lease agreement with C.R. He has been in camp for work since December. He had C.R. sign a caretaker agreement to look after the house. C.R. does not pay rent and he does not pay C.R. for taking care of the rental unit. He has been back from camp 14 days since December 31, 2018. He stayed at the rental unit overnight on two of these days. He stayed at his daughter's house for the remainder of these days.

I asked the Landlord why he had not submitted the caretaker agreement he has with C.R. The Landlord thought he had. S.D. confirmed the Tenant received this. I allowed the Landlord to upload the document after the hearing given the Tenant had received it.

I asked the Landlord why he needed a caretaker for the rental unit. He said he did because he was going to move in but has been staying at camp and is at camp all the time, so it does not make sense for him to move into the rental unit.

The Landlord agreed that he has not moved into the rental unit. The Landlord agreed the rental unit is not his residence. The Landlord agreed that his daughter's place is his residence.

I asked the Landlord if he agrees he did not follow through with the stated purpose of the Notice and he replied that he does agree he did not follow through. I explained to the parties that, given this acknowledgment by the Landlord, the only issue before me is whether there were extenuating circumstances.

The Landlord testified as follows in relation to extenuating circumstances.

He intended to move into the rental unit but was called to camp for work. He is an oil field contractor and has been for 25 years. He has worked for the same company for

this entire time. He has always gone to camp for work and has always gone to camp often. However, there was talk about shutting camp down in which case he would have had to move into the rental unit.

The Landlord submitted an Occupancy Agreement between him and C.R. Both have signed the agreement. It states that the Landlord offered the rental unit to C.R. to care for and maintain while the Landlord is away working in camp.

Analysis

The Notice was issued and served October 23, 2018. Therefore, the new legislation that came into force May 17, 2018 applies.

Section 51 of the *Act* states:

(2) Subject to subsection (3), the landlord...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.

(3) The director may excuse the landlord...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.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove she is entitled to compensation under section 51(2) of the *Act*.

I find the Landlord has failed to follow through with the stated purpose of the Notice based on his testimony alone.

The Landlord acknowledged the following. C.R. moved into the rental unit in January. C.R. is not related to the Landlord. C.R. lives at the rental unit full time. The Landlord has not moved into the rental unit. The Landlord's residence is his daughter's place. He has only stayed at the rental unit for two nights since December 31, 2018.

These circumstances do not amount to the Landlord or the Landlord's close family member occupying the rental unit. The Landlord does not occupy the rental unit. He lives at his daughter's place and stays at camp. C.R. occupies the rental unit. C.R. is not related to the Landlord.

The Landlord acknowledged that he did not follow through with the stated purpose of the Notice and I agree.

The Tenant has proven her claim that she is entitled to compensation under section 51(2) of the *Act*.

Section 51(3) allows an arbitrator to excuse a landlord from paying a tenant compensation under section 51(2) if extenuating circumstances prevented the landlord from following through with the stated purpose of a notice issued under section 49 of the *Act*.

It is the Landlord who has the onus to prove extenuating circumstances. The Landlord submitted that the extenuating circumstances were that there was talk of the work camp closing in which case he would have had to move into the rental unit. However, the camp did not close.

The Landlord submitted no evidence to support his testimony about his job, employer, work schedule or work requirements as it relates to being at camp. Further, the Landlord submitted no documentary evidence showing that there was talk about shutting camp down, when this occurred, who initiated the talk, that the situation changed or when it changed. This is the type of evidence required to support extenuating circumstances.

In the absence of any documentary evidence to support the Landlord's testimony about extenuating circumstances, I do not accept that the extenuating circumstances claimed in fact existed. I decline to excuse the Landlord from the compensation requirement under section 51(2) of the *Act*. The Landlord must compensate the Tenant \$6,000.00.

As the Tenant was successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to a Monetary Order in the amount of \$6,100.00.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$6,100.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: May 14, 2019

Residential Tenancy Branch