



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on May 13, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

The Landlord and the Tenant both attended the hearing. The Landlord confirmed receipt of the Tenant's application and evidence. The Tenant confirmed receipt of the Landlord's evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenant stated that monthly rent was \$1,400.00 per month. The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on August 1, 2018. The Tenant provided a copy of the Notice into evidence, and it indicates the Landlord was seeking to end the tenancy so that she, or a close family member, could move in. The Tenant stated that the Landlord did not move in for very long, and quickly bought another house, and failed to fulfill her obligations under the Act (to live in the rental unit for 6 months).

The Landlord stated that she initially issued the Notice because she was selling her other house, and she wanted to move into this rental unit. The Landlord stated that on August 5, 2018, she accepted an offer on her other house, with a completion date of October 3, 2018. The Landlord stated that on October 3, 2018, she moved into the rental unit, as she said she would. The Landlord provided documentation showing the real estate transactions.

The Landlord stated that she was planning on staying in the rental unit, long term, but she found a different house she wanted to buy a matter of days after moving into the rental unit. As a result, the Landlord stated she bought a new house on October 9, 2018, and took possession of that home on October 30, 2018. The Landlord stated that she moved into her new home, and left the rental property on November 3, 2018. The Landlord stated that she eventually re-rented the rental unit in question on February 1, 2019.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant is seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$1,400.00) because the Landlord did not live in the rental unit for at least 6 months.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

51 (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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice 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.

I note the Landlord presented some reasons as to why they did not live in the rental unit, for a longer period of time. I note the Landlord found another home to buy and move into. The Landlord only lived in the rental unit for, at most, one month (from October 3, 2018, until November 3, 2018). The Landlord confirmed this fact, and stated she had honest intentions, but ended up moving to another house because the deal was too good to pass up.

I acknowledge what the Landlord has said on this matter. However, a Landlord who issues a Notice under this section of the Act has to takes steps accomplish the stated purpose on the Notice, within a reasonable period after the effective date of the Notice, and use the rental unit for this stated purpose for a period of at **least 6 months**. In this case, the undisputed evidence is that the Landlord did not live in the rental unit for 6 months. It appears the Landlord only lived in the unit for 1 month before moving out and re-renting it.

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Further, ***Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy*** states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

I have considered the totality of the evidence and testimony, and I find there is insufficient evidence to show that there were "extenuating circumstances" or that there were exceptional circumstances such that the Landlord ought to be excused from paying the compensation due. Even if the Notice was issued in good faith, there is a requirement for the Landlord to use the rental unit for the stated purpose for at least 6 months.

As the Tenant was successful with his application, I also grant him the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenant a monetary order in the amount of \$16,900.00 because the Landlord breached section 51 of the Act.

Conclusion

I grant the Tenants a monetary order in the amount of \$16,900.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: May 14, 2019