



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution and the tenant's evidence. I find the parties landlord served in accordance with the *Act*.

Preliminary Matter: Admissibility of Landlord's Evidence

The landlord sent her evidence to the Residential Tenancy Branch (the "RTB") five days before the hearing and she testified that she did not serve her evidence on the tenant. *Residential Tenancy Branch Rules of Procedure*, sections 3.15 states that the respondent's evidence must be received by the applicant and the RTB seven days before the hearing. I find that the landlord did not serve her evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*. I find that the admission of this evidence without service upon the tenant would prejudice the tenant and result in a breach of the principles of natural justice. Accordingly, landlord's undisclosed evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to a recover his filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

The tenant formerly occupied the rental unit. The rent was \$925.00 per month.

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on April 1, 2018 with an effective date of June 30, 2018. The stated reason for the Two Month Notice was so that the landlord, or the landlords' close family, could move into the rental unit and to make repairs which required the rental unit to be vacant.

At the hearing, the landlord testified that the Two Month Notice was issued so that the landlord's daughter, M.S., could move into the rental unit. During the hearing, the landlord conceded that the rental unit did need to be vacant for repairs.

The tenant vacated the rental unit on June 28, 2018. The landlord testified that her daughter, M.S., never moved into the rental unit. The landlord testified that the daughter was unable to move into the rental unit immediately after the tenant vacated the property because they needed to make repairs and clean the property. These repairs included painting, cleaning replacing a door and fixing a window. The landlord testified that these repairs started at the end of July and they could not be completed until October 2018. The landlord testified that these repairs took a long time because there were performed by a family member who had a physical injury.

The landlord testified that M.S. kept changing her mind as to whether she would move into the rental unit. The landlord testified that M.S. had mental health conditions which made it difficult for her to make decisions. The landlord testified that they eventually advertised the rental unit since the M.S had not moved in.

The landlord testified that she advertised the rental unit in October 2018 and December 2018. The tenant provided copies of classified advertisements from October 2018 and December 2018 showing the property was advertised for rent at \$1,785.00 per month.

Analysis

The tenants are seeking compensation under section 51 of the *Act*, which as of the date the Two Month Notice was issued on April 1, 2018, stated in part, as follows:

51(2) ..., 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 added]

I find that the effective date of the Two Month Notice was June 30, 2018 and that the stated reason for the Two Month Notice was so that the landlords, or the landlords' close family, could move into the rental unit and to make repairs which required the rental unit to be vacant.

During the hearing, the landlord conceded that the rental unit did need to be vacant for repairs. Accordingly, the tenant can establish a claim for compensation under section 51(2) of the *Act* if the tenant can prove that either the landlord's daughter did not move into the property within a reasonable period of time after June 30, 2018 or the landlord's daughter did not reside at the property for six months starting within a reasonable period after June 30, 2018.

I find that the landlord's daughter did not move into the property within a reasonable time of the end of the tenancy as required by section 51(2). In this matter, the landlord has admitted that the landlord's daughter has never in fact moved into the rental unit. As such, the landlord is required to pay compensation in the amount of two months rent to the tenant pursuant to section 51(2).

However, section 51(3) states that an arbitrator may excuse a landlord from compensation pursuant to section 51(2) if there are extenuating circumstances

preventing the landlord's family from moving into the rental unit. *Residential Tenancy Policy Guideline No. 50* explains 'extenuating circumstances' 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.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

In this matter, the landlord argued that her daughter was unable to move into the rental unit because repairs were needed and her daughter suffered from mental health issues.

I find the repairs cited by the landlord were superficial and would not have prevented the landlord's daughter from moving in. And, if the landlord wanted to complete the repairs before her daughter moved in, these repairs should not have required four months to complete. I do not find that these superficial repairs constituted an extenuating circumstance.

Furthermore, I do not find that the mental health condition of M.S was an extenuating circumstance. There is no evidence that M.S.'s condition deteriorated after the Two Month Notice was issued. Furthermore, the landlord testified that, as a result of M.S.'s mental condition she was unable to make up her mind whether she wanted to move into the rental unit. However, *Residential Tenancy Policy Guideline No. 50* specifically states that changing one's mind about moving into the rental unit is not an extenuating circumstance. As such, I do not excuse the landlord from compensation under section 51(2).

Accordingly, I order the landlord to pay the tenant compensation in the amount of two months of rent. As both parties agree that the monthly rent was \$925.00, I find that the tenant is entitled to compensation in the amount of \$1,850.00 (\$925.00 x two months)

Since the tenant has been successful in this matter, I grant the tenants' request for reimbursement of the filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant the tenant's application for compensation in the amount of \$1,850.00

I grant the tenant's request for reimbursement of the \$100.00 filing fee.

I grant the tenant a monetary order in the amount of **\$1,950.00**. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court to 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

Residential Tenancy Branch