



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the teleconference hearing as was the previous Landlord, the previous Landlord’s spouse and the current Landlord/home owner.

The Landlords both confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the evidence from the previous Landlord as well as the current Landlord.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Tenant named three individuals on the Application for Dispute Resolution which included the previous Landlord/owner and the two current owners who became the Landlords when they purchased the property. It was confirmed at the outset of the hearing that the Tenant was seeking 12 months compensation pursuant to Section 51 of the *Act*. As the previous Landlord was present at the start of the hearing he confirmed that the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two

Month Notice”) was served due to a request from the purchasers through the Contract of Purchase and Sale. This was agreed upon by all parties present.

As such, I find that this dispute should be against the two purchasers of the home as they requested that the Two Month Notice be served through the purchase of the property. The Tenant did not object to removing the previous Landlord from the application. Therefore, pursuant to Section 64(3)(c) of the *Act*, respondent/Landlord P.M. was removed from the Application for Dispute Resolution. Both P.M. and E.M. were asked to exit the hearing and the hearing continued with the Tenant and one of the new Landlords/owners.

As the previous Landlord P.M. is no longer named on this dispute and as such did not participate in the hearing, the evidence submitted by this Landlord will not be considered in this decision.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenant testified that the tenancy began in June 2017 and ended on January 28, 2019. Monthly rent at the end of the tenancy was \$925.00 which was confirmed by the previous Landlord P.M. while he was present at the hearing. The Tenant stated that he paid \$462.50 for a security deposit which was returned at the end of the tenancy.

The Landlord C.B. was in agreement that the Tenant moved out on January 28, 2019 and that the security deposit was returned. He submitted a copy of an e-transfer receipt which he stated was the return of the security deposit as well as three days of rent as the Tenant moved out early.

The Tenant stated that he received the Two Month Notice in late November 2018. The Two Month Notice dated November 26, 2018 was submitted into evidence and states the following as the reasons for ending the tenancy:

- All of the conditions for the 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

The two purchasers of the property were named on the Two Month Notice. The effective end of tenancy date was stated as February 1, 2019.

The Tenant is seeking 12 months of compensation due to his belief that the Landlords did not use the rental unit for the stated purpose of the Two Month Notice. The Tenant stated that when the new Landlords took possession of the home in mid-December 2018 it was difficult to meet with them to have a discussion. However, he stated that in mid-January 2019 he sent them a text message to confirm whether they wanted him to move out by February 1, 2019 or whether he could stay longer.

The text messages were submitted into evidence. The Landlord's response was as follows:

Your 2 months notice started in December, you are supposed to be out by February 1st. We currently haven't decided what we want to do with the place, so if you could be out by February 1st, that would be great. Sorry for any inconvenience or confusion.

The Tenant stated that he moved out into a temporary place as he had nowhere to go. As such, he testified that he was looking online for rental units right after moving out and saw an online advertisement for the rental unit he just moved out of. The Tenant stated that the unit was advertised for \$1,250.00 per month. The Tenant stated that he continued to see advertisements online for the next couple months and that the monthly rent was dropped a while later. The Tenant submitted copies of the online advertisements into evidence.

The Tenant also submitted a copy of a text message sent in March 2019 to the Landlord inquiring if the unit was still available and the Landlord's response that it had been rented. The Landlord confirmed that they asked to have the Two Month Notice served through their realtor with the purchase of the home. He stated that they took possession of the home on December 15, 2019. He submitted that the rental unit is a 1-bedroom carriage house attached to a garage and that the Tenant had rented the carriage house along with the garage.

The Landlord testified that when they purchased the home they intended to occupy the rental unit as a media room for their own use. However, he stated that circumstances changed and due to some unexpected expenses, they realized that they would not be able to afford to use the rental unit for their own use.

The Landlord stated that when the Tenant moved out they renovated the bathroom and changed the space around so that the garage was separated from the unit. He further stated that they now occupy the garage and it is not part of the rental. He also noted that they added a washer and dryer.

The Landlord agreed that they posted an advertisement for the rental unit right away although they told potential renters that it was being renovated and they could not move in until the renovations were complete. He stated that they rented the unit (without use of the garage) for April 1, 2019.

The Tenant stated that during the tenancy he had stored some belongings in the garage which he moved out after getting the Two Month Notice. He stated that he did not require use of the garage and would have made arrangements with the Landlords for their use of the garage or other options so that he could stay. He also noted that he had offered the garage to the Landlords, a claim which the Landlord denied.

The Tenant stated that he accepted the Two Month Notice as he found it reasonable that the new owners may want to occupy the rental unit as part of the home they had purchased. However, he stated his frustration that had the Landlords not intended to occupy the rental unit they could have discussed this with him and he could have made arrangements to stay.

The Landlord stated that they were not aware that the Tenant had nowhere to move to and if that were the case questioned why the Tenant moved out three days early. The Landlord stated that they were unsure of their plans for the rental unit but did take over a part of the unit (the garage) for their own use.

Analysis

The parties agreed that the Tenant was served with a Two Month Notice pursuant to Section 49(5) of the *Act* as the purchasers asked the previous landlord to serve the notice so they could occupy the rental unit for their own use.

Section 51(2) of the *Act* states the following:

(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.

However, Section 51(3) also notes that a landlord may be excused in there are extenuating circumstances which prevented the landlord from accomplishing the stated purpose of the Two Month Notice within a reasonable time period.

Residential Tenancy Policy Guideline 50 defines 'extenuating circumstances' as those where it would be unreasonable for a landlord to pay compensation due to circumstances outside of their control. An example of this would be plans for a parent to move in but the parent passes away.

In this matter, the Landlord stated that they changed their mind about using the rental unit for their own use due to some unexpected expenses that arose. In the text message submitted by the Tenant from mid-January 2019 the Landlord also states that they were unsure of their plans for the rental unit but still asks the Tenant to vacate by February 1, 2019. Regardless of whether or not the Landlord was aware that the Tenant had nowhere to go, I find that the plans for the rental unit should have been finalized prior to asking for the Two Month Notice to be served.

Although the Landlord stated that they took over part of the rental unit by using the garage for their own use, I do not find that this qualifies as using the rental unit for the stated purpose of the Two Month Notice. As stated by the Tenant, there may have been ways for the parties to discuss the use of the garage while the tenancy still continued. As the rental unit was advertised for rent right after the Tenant moved out, I find that the rental unit was not occupied by the Landlord and the tenancy did not need to end.

Instead, I find that the Landlords either requested the Two Month Notice to be served without having finalized their plans for the rental unit, or that they changed their mind after the Two Month Notice was served. Either way, I do not find this to be the purpose of serving a Two Month Notice and do not find evidence of any extenuating circumstances.

Accordingly, I am satisfied that the Tenant has established his claim that the Landlords did not use the rental unit for the stated purpose of the Two Month Notice. Therefore, I find that the Tenant is entitled to 12 months of compensation in accordance with Section 51(2) of the *Act*. I accept the testimony of the Tenant that rent was \$925.00 per month, which was also confirmed by the previous landlord who was present at the start of the teleconference hearing. Therefore, I award the Tenant compensation in the amount of \$11,100.00.

As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant is granted a Monetary Order in the amount of \$11,200.00.

Conclusion

Pursuant to Sections 51, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$11,200.00** as outlined above. The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: June 28, 2019

Residential Tenancy Branch