



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Did the Landlord take steps, within a reasonable period after the effective date of the notice to end tenancy for landlord’s use, to accomplish the stated purpose for ending the tenancy?

Is the Tenant entitled to the monetary amounts claimed?

Preliminary Matter

The Tenant states that no evidence was provided to the Tenant from the Landlord. The Landlord confirms that a copy of the documentary evidence provided to the Residential Tenancy Branch (the “RTB”) was not given to the Tenant.

Rule 3.15 of the RTB Rules of Procedure provides that evidence that the respondent intend to rely on at the hearing must be served on the applicant. As the Landlord provided evidence for this hearing to the RTB, I consider that this evidence was

available to be served on the Tenant. Based on the undisputed evidence that the Landlord did not serve the Tenant with any evidence, I find that the Landlord's evidence given to the RTB may not be considered for the purposes of making any findings in this dispute.

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on January 1, 2016. Rent of \$1,300.00 was payable on the first day of each month. On May 27, 2018 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use (the "Notice"). The Notice sets out an effective date of July 31, 2018. The reason stated on the Notice is that the unit will be occupied by the landlord or a close family member of the landlord.

The Tenant states that when the Landlord gave the Tenant the Notice the Landlord informed the Tenant that the Landlord intended to live in the unit for a year and then would sell the unit. The Tenant states that extra time was given to move out and that the Tenant moved out of the unit on August 7, 2018. The Tenant states that in mid-October 2018 the unit was listed for sale. The Tenant states that near the end of December 2018 the unit was still listed for sale but the price had been reduced. The Tenant states that the unit was still listed for sale in January 2019. The Tenant provides copies of the listings and states that the photos in the listings are those of the rental unit. The Tenant states that between October 2018 and January 2019 a person who lived across from the rental unit informed the Tenant that nobody was seen moving into or occupying the unit. The Tenant states that a member of the strata council for the building also informed the Tenant in October 2018 that there was no awareness of anybody moving into unit. The Tenant provides copies of texts from these persons. The Tenant also states that between the end of the tenancy and January 2019 the Tenant was still receiving calls for entry to the rental unit indicating that the registration for the entry by phone was not changed. The Tenant provides copies of its phone records.

The Landlord states that the unit was listed on October 10, 2018 to test the market. The Landlord states that there was no intention to sell the unit at the time as the Landlord would then have to incur heavy tax costs. The Landlord states that the unit was removed from the listing on December 7, 2018. The Landlord states that they tried to move into the unit in September 2018 however as the Landlord's wife had become unemployed due to a wrist injury, as the Landlord was exhausted from working two to three jobs, and as the wife started attending school for further education, they were unable to move into the unit. The Landlord states that in November 2018 they started making preparations to downsize and move into the unit that was smaller than the rental unit they were occupying at the time. The Landlord states that they moved into the unit on December 20, 2018 and paid for storage of their belongings on December 17, 2018. The Landlord states that it made a big mistake by listing the unit for sale, that they did not know the Act's requirements, and that the extenuating circumstances that stopped them from moving into the unit was the wife's wrist injury and change of career.

In giving final evidence the Tenant stated that on the date of the move-out inspection, August 6, 2018, the Landlord's wife was present and informed the Tenant that the Landlord's intentions were to remain living where they were and to sell the unit as soon as possible. The Landlord was given final opportunity to respond to the Tenant's evidence and the Landlord stated that they had no final evidence in response. The Tenant claims \$15,600.00.

Analysis

Section 51(2) of the Act provides that, in addition to the compensation payable to the tenant when the landlord ends the tenancy for landlord's use, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- 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

- 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.

Section 51(3) of the Act provides that the landlord may be excused from paying the above amount if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- 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.

Given the Tenant's undisputed evidence that the Landlord's wife informed the Tenant at move-out that the intention was to sell the unit as soon as possible, I find that the Landlord never did have the intention to move into the unit. Given the undisputed evidence that the unit was placed for sale in early October 2018 and considering the Tenant's evidence from the strata council member, the neighbour, the phone entry attempts and ads for sale of the unit into January 2019, I find on a balance of probabilities that the Landlord did not take any steps to occupy the unit until late December 2018. I consider that this is not a reasonable period after either the effective date of the Notice or the delayed end of the tenancy to accomplish the move into the unit. Given the undisputed evidence of putting the unit up for sale within a short period of time after the end of the tenancy and the Tenant's evidence of the unit being listed for sale into January 2019, I consider the wrist injury, work requirements, downsizing issues, and educational attendance or career change were not extenuating circumstances that prevented the Landlord from occupying the unit but were more likely circumstances that supported the unit being for sale to at least January 2019. For these reasons I find on a balance of probabilities that the Tenant has substantiated that the Landlord did not take steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy. The Tenant is therefore entitled to the compensation claimed of **\$15,600.00**. As the Tenant has been

successful with its claim I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$15,700.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$15,700.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: June 12, 2019

Residential Tenancy Branch