



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$15,600.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of their filing fee. The Tenants' claim focuses on the Landlord not having used the rental unit for the stated purpose, after giving the Tenant a Two Month Notice to End the Tenancy for the Landlord's use dated September 19, 2018 ("Two Months' Notice").

The Tenant, J.A., her witness, K.J., ("Witness"), the Landlord, and the Landlord's lawyer, N.C. ("Lawyer"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions. During the hearing the Parties were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing, including the Tenant's amendment of the Application.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2017, with a monthly rent of \$1,200.00, due on the first day of each month. The Parties agreed that the Tenants paid a security deposit of \$600.00 and no pet damage deposit. The rental unit is the basement suite and the Landlords live in the suite in the upper floor(s).

The Tenants applied for compensation for one month's rent payable pursuant to section 51(1) of the Act. The Tenants also applied for compensation pursuant to section 51(2) of the Act for twelve months rent, because they say the Landlord did not use the rental unit for the purpose stated in the Two Month Notice.

The Two Month Notice states that the Tenants must move out by December 1, 2018. The date in the appropriate boxes on the Two Month Notice is illegible; however, the date "01/12/2018" is clearly written underneath the appropriate boxes, though not initialed. The Tenants did not dispute this date on the Two Month Notice; as such, I accept the corrected date of December 1, 2018 as the effective vacancy date, pursuant to section 53 of the Act.

The Landlord's evidence in the hearing was that he needed the rental unit, because his sister, aunt and uncle were going to visit from India and they needed the space. The Landlord said that he and his wife stayed in the rental unit downstairs, so that the visitors could have the nicer residence upstairs.

The ground checked on page two of the Two Month Notice was the second box stating: "the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

In a written submission letter (the "Letter"), the Lawyer said that the Landlord erroneously checked the second box on the list of grounds on the Two Month Notice, instead of the first box, which states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that

individual's spouse)." The Lawyer said the Landlord intended to check this ground and that their actions are consistent with this ground, as they are not a family corporation.

The Letter states that the Landlord served the Tenants with the Two Month Notice on September 19, 2018, by delivering it in person. The Letter states that on September 23, 2018, the Tenants gave the Landlord notice of the Tenants' intent to vacate the unit early, as of October 1, 2018.

The Tenant argued that the Landlord did not use the rental unit for the purpose stated in the Two Month Notice, in that the Landlord's sister, aunt and uncle are not included within the definition of "close family member" under the Act. The Tenant also testified that when she served her Application on the Landlord that she saw two individuals entering and exiting the rental unit who she thought were new tenants, not the Landlord's close family members.

The Tenant submitted a written statement from her Witness saying that he accompanied the Tenant to serve the Landlord with the Application on February 7, 2019. The Witness said:

I am writing this letter as a statement that I had accompanied [the Tenant] on 7th February to her past residence [rental unit address]. I went with her and [S.K.] to hand over the dispute resolution package for file # [Application file number], to the landlord – [Landlord]. Landlord was not at home but I saw 2 South Asian (Indian) boys who looked like students, because they were wearing backpacks, who first came out of the rental unit and sometime later went back in there. I believe they are new tenants and were looking like they would be between 20-25 years of age. For any questions you can call me at [telephone number]....

This statement was accompanied by a copy of the Witness's B.C. driver's licence.

In the Letter, the Lawyer said that the Tenant's evidence about having seen two individuals on the property that the Tenant thought were renters is not substantial "other than the fact that they were 'wearing backpacks'." The Lawyer went on: "In response, the landlord says that when his aunt and uncle came to visit him, he had a number of visitors throughout their stay, as they were coming to see his aunt and uncle."

Analysis

Based on the evidence before me, I find that the Landlord served the Tenant with the

wrong Notice. The Tenants were informed by the Two Month Notice that: "The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit." In the hearing, the Landlord acknowledged that this is not the case. As a result, I find that the Two Month Notice is not valid, as it is inconsistent with section 52 of the Act as to form and content, as it did not state the accurate grounds for ending the tenancy. Accordingly, the Landlord did not do what they said they would do on the Two Month Notice.

Further, the Landlord's evidence is that he re-rented the rental unit to a new tenant as of April 1, 2019, which is only four months after the effective date of the Notice.

Section 51(2) of the Act states:

(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.

[emphasis added]

In addition, inconsistent evidence from the Landlord raises further questions in my mind about the Landlord not using the rental unit for the stated purpose. The Landlord's evidence was that he and his wife were staying in the basement suite when relatives visited; however, the Landlord also gave evidence implying that the two young men the Tenant saw on February 7, 2019, were there to visit the Landlord's aunt and uncle. If the aunt and uncle were staying in the upstairs residence, it seems odd that the young visitors would be going in and out of the basement suite or rental unit.

When I consider the evidence before me overall, I find I prefer the Tenants' version of events, that the Landlord did not use the rental unit for the stated purpose for ending the tenancy within a reasonable period of time after the effective date of the notice. As a

result, I award the Tenants with \$14,400.00 or the equivalent of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51(2) of the Act.

Given that the Tenants were successful in their application, I also award them with recovery of the \$100.00 Application filing fee.

Conclusion

The Tenants claim for recovery of twelve times the amount of rent is successful, as the Landlord did not use the rental unit for the purpose stated in the Two Month Notice.

The Tenants are successful in their Application for twelve months rent payable by the Landlord under section 51(2) of the Act. I also award the Tenants with recovery of the \$100.00 Application filing fee.

I grant the Tenants a monetary order under section 67 of the Act from the Landlord in the amount of **\$14,500.00**.

This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 20, 2019

Residential Tenancy Branch