



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on January 31, 2019, wherein the Tenant sought monetary compensation from the Landlords pursuant to section 51(2) of the *Residential Tenancy Act* and recovery of the filing fee.

The hearing was scheduled for 1:30 p.m. on May 23, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlords?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant sought monetary compensation based on a 2 Month Notice to End Tenancy for Landlord's Use issued on November 30, 2016. The effective date of the Notice was January 31, 2017. The tenancy ended on February 1, 2017.

The Tenant alleged the Landlord did not issue the Notice in good faith and consequently sought monetary compensation pursuant to section 51(2) of the *Act*.

In terms of what the Landlord used the rental unit for after the tenancy ended, the Tenant stated that "he had no idea", that she may have "possibly rented it out" and that overall it seemed "very suspicious".

The Tenant further stated that he believes the Landlord issued the Notice because she did not want to deal with required repairs. The Tenant noted that two days after he requested these repairs the Landlord issued the Notice. He also stated that he believes she wanted to rent it for a higher price based on the fact she spoke to him about her high mortgage and expenses. Further, he stated that the Landlord told him that she wanted him to move out because she felt he was a "bad fit".

The Tenant alleged that in August of 2017 the Landlord rented the rental unit to others such that her son no longer needed the space.

In response to the Tenant's claims, the Landlord testified as follows. The Landlord testified that her son used the rental unit for his online business after the tenancy ended. She further testified that both her son and daughter run online businesses and found it very difficult to run their businesses from the main house. She stated that they import blankets, hats and other textiles and used one of the suites in the basement for packing items, and the other space for conducting their business including listening to webinars. She stated that as she and her husband are also home, it was not possible for her son to use the upstairs for his business.

The Landlord testified that she did not rent the rental unit to anyone else until August of 2017.

Analysis

The Tenant seeks monetary compensation pursuant to sections 49 and 51 of the *Residential Tenancy Act*. At the time the notice was issued in 2016, those sections read as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser 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.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the [*Strata Property Act*](#);
- (d) convert the residential property into a not for profit housing cooperative under the [*Cooperative Association Act*](#);

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In the case before me the Notice was issued on November 30, 2016. The Tenants did not dispute the Notice.

As *Residential Tenancy Policy Guideline 2* provides, the good faith intention of the Landlord can be raised when a 2 Month Notice is disputed. In this case, the Tenant did not dispute the Notice.

In terms of compensation pursuant to section 51(2), *Guideline 2* further provides as follows:

F. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

If a tenant can show that a landlord who ended their tenancy under section 49 of the RTA or section 42 of the MHPTA has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only),

the tenant may seek an order that the landlord pay the tenant a set amount of additional compensation for not using the property for the purpose stated in the Notice to End Tenancy.

The question of monetary compensation pursuant to section 51(2) relates to whether the Landlord in fact did what they said they intended to on the Notice. Rather than looking forward when a Notice is disputed, a claim for compensation pursuant to section 51(2) looks back in time at what the Landlord said they would do in relation to what they actually did.

In the case before me the Tenant conceded that he had “no idea” what the Landlord used the property for. He stated that his case rested on suspicion that the Landlord did not use it for the stated purpose. He cited various reasons why he thought the Landlord wished to end his tenancy; however, he failed to submit any evidence to support a finding that the Landlord in fact used the property for some other purpose.

The Landlord’s affirmed evidence was that her son used the rental unit for his online business. I found her testimony to be consistent and credible. I accept her evidence that her son was not able to successfully operate his business from the main home due to the presence of other family members. I also accept her evidence that she did not re-rent the unit until August 2017.

In all the circumstances I find she used the rental unit for the purposes stated on the Notice and I therefore dismiss the Tenant's claim for compensation pursuant to section 51(2).

Conclusion

The Tenant's Application for monetary compensation pursuant to section 51(2) is dismissed. Having been unsuccessful with his application, his request to recover the filing fee is also dismissed.

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 18, 2019

Residential Tenancy Branch