



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT

Introduction

This hearing was convened in response to the Tenant's application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), Regulation or tenancy agreement.

The Agent for the Tenant, who is the Tenant's mother, appeared on behalf of the Tenant. The Tenant submitted a document authorizing this party to act on his behalf at these proceedings.

The Agent for the Tenant stated that on February 16, 2019 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in February of 2019 were sent to each Landlord, via registered mail. The female Landlord stated that both of the aforementioned packages were delivered to her home. She stated that she has not provided the male Landlord with the package addressed to him, as he is currently in jail and is prohibited, by court Order, from communicating with her (the female Landlord).

As the female Landlord acknowledged that both packages were mailed to her address, I find that she has been served with these documents pursuant to 89(1)(c) of the *Act*. As the package addressed to the male Landlord was received by the female Landlord, I find that those documents have been served to the male Landlord pursuant to 89(1)(b) of the *Act*. As these documents have been served to the male Landlord, these hearings proceed in his absence. As the documents were properly served to the Landlords, the evidence was accepted as evidence for these proceedings.

On April 11, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenant, via registered mail, on April

11, 2019. The Agent for the Tenant acknowledged that this evidence was received and it was accepted as evidence for these proceedings.

On May 02, 2019 the Tenant evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was served to the Landlords, via regular mail, on May 03, 2019. The female Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. All of the documentary evidence was reviewed, but it is only referenced in this decision if it is directly relevant to an issue in dispute in these proceedings.

The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Agent for the Tenant and the female Landlord agree that this tenancy began in 2015 and at the end of the tenancy the monthly rent was \$728.00.

The female Landlord stated that on June 21, 2018 the male Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use. The Agent for the Tenant stated that the Tenant found this Notice posted to his door on June 23, 2018.

The Agent for the Tenant and the female Landlord agree that the Two Month Notice to End Tenancy for Landlord's Use declared that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit and that the Notice declared that the Tenant must vacate the rental unit by September 01, 2018. A copy of the Notice to End Tenancy was submitted in evidence.

The female Landlord stated that the rental unit was vacated on September 01, 2018. The Agent for the Tenant stated that it was vacated on August 30, 2018.

The female Landlord stated that:

- she and the male Landlord separated in December of 2017;

- after they separated the male Landlord moved into rented accommodations;
- the male Landlord moved into the rental unit on September 01, 2018;
- the male Landlord lived in the rental unit until he was incarcerated on December 11, 2018;
- when the male Landlord moved into the rental unit he did not know he would be sentenced in December of 2018;
- the rental unit was advertised for rent in January of 2019; and
- a new tenant moved into the unit on February 01, 2019

The Agent for the Tenant did not dispute that the male Landlord moved into the rental unit or that he was incarcerated in December of 2018. She argued that since the male Landlord was already living in rented accommodations, he did not need to move into this rental unit.

The Landlords submitted ~~a letter~~ an envelope from a banking institution, which is addressed to the male Landlord at this rental unit.

Analysis

On the basis of the undisputed evidence I find that the Tenant was paying monthly rent of \$728.00 at the end of this tenancy.

On the basis of the undisputed evidence I find that the Tenant was served with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, which required him to vacate the rental unit by September 01, 2018. This Notice declared that the landlord or a close family member of the landlord intended, in good faith, to occupy the rental unit.

Section 51(2) of the *Act* stipulates that if steps were not 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 the rental unit was 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 12 times the monthly rent payable under the tenancy agreement.

On the basis of the undisputed evidence I find that the male Landlord moved into the rental unit on September 01, 2018. I therefore find that the Landlords are not subject to penalty because steps were not taken to move into the rental unit within a reasonable period after the effective date of the Notice to End Tenancy.

On the basis of the undisputed evidence I find that the male Landlord ceased living in the rental unit in December of 2018 due to his incarceration. I therefore find that the Landlords may be subject to penalty because the rental unit was not occupied by the Landlord or a close family member for at least six months after the effective date of the Notice to End Tenancy.

In adjudicating this matter I was influenced, to some degree, by the letter envelope submitted in evidence, which is addressed to the male Landlord at the rental unit. This letter corroborates the testimony of the female Landlord. More importantly, I found the female Landlord's testimony regarding the issue of incarceration to be very forthright and highly credible.

Section 51(3) of the *Act* permits me to excuse a landlord from paying the tenant the amount required by section 51(2) of the *Act* if extenuating circumstances prevented the landlord 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.

Residential Tenancy Branch Policy Guideline #50, with which I concur, provides the following examples of circumstances where it would be unreasonable and unjust for a landlord to pay compensation:

- 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.

Residential Tenancy Branch Policy Guideline #50 provides the following examples of circumstances that are probably not extenuating circumstances:

- 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.

I find that the male Landlord's incarceration was an extenuating circumstance that prevented him from living in the rental unit for at least six months after the effective date of the Two Month Notice to End Tenancy. Clearly his incarceration prevented him from continuing to live in the unit. As there is no evidence to establish that the male Landlord knew when he would be sentenced or that he knew the duration of his incarceration when he served the Two Month Notice to End Tenancy, I find that there is no evidence to show that the male Landlord knew that he would be unable to live in the unit for at least six months.

As there were extenuating circumstances that prevented the male Landlord from living in the rental unit for at least six months, I find that the Landlords are not subject to the penalty imposed by section 51(2) of the *Act*. I therefore dismiss the Tenant's application for compensation.

In adjudicating this matter I have placed no weight on the Tenant's submission that the Landlord was already living in rented accommodations when the Two Month Notice to End Tenancy was served and he did not need to move into this rental unit. I find this submission is

not relevant, as a landlord has a right to move into a rental unit if the landlord wishes to occupy his/her property.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

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 02, 2019

Corrected: June 26, 2019

Residential Tenancy Branch