



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 pursuant to Section 51 of the *Act*, 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 Landlord, the Landlord’s spouse and legal counsel for the Landlord (collectively the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of two pieces of documentary evidence from the Tenant. They stated that this included a copy of the notice to end tenancy and a witness letter from a neighbour. Although the Tenant submitted additional evidence to the Residential Tenancy Branch, she confirmed that she had not served a copy to the Landlord, other than the two pieces of evidence as stated by the Landlord. As the remaining evidence was not served to the Respondent as required by the *Residential Tenancy Branch Rules of Procedure*, it is not accepted and will not be considered as part of this decision. The Tenant confirmed receipt of the Landlord’s evidence package and did not bring up any issues regarding service.

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. Neither party called any witnesses.

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

Preliminary Matters

Two parties were named as Landlords on the Application for Dispute Resolution. However, legal counsel for the Landlord clarified that only F.T. should be named as the Landlord as she is the sole owner of the property. Therefore, M.S. was removed as a named Landlord/Respondent on the application. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

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 parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on May 1, 2017 and ended on or around June 28, 2018. Monthly rent was \$900.00 and a security deposit of \$450.00 and a pet damage deposit of \$250.00 were paid at the start of the tenancy.

The tenancy began with a previous landlord. The Landlord named on this dispute purchased the home and took possession in October 2017 when the tenancy was already in place.

The Tenant testified that she had an initial fixed term tenancy with the previous landlord for one year. However, she noted that the legislation changed and allowed this to move to a month-to-month agreement. She stated that she saw an online advertisement for the rental unit for April 1, 2018 in the amount of \$1,200.00 per month. After conversations with the Landlord and Landlord's spouse, the Tenant stated that she advised them that she would not be moving out at the end of the fixed term agreement.

The Tenant stated that around April 10, 2018 she received the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") by mail. The Two Month Notice, dated April 3, 2018, was submitted into evidence and states the following as the reason for ending the tenancy:

- 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 effective end of tenancy date of the Two Month Notice was stated as June 30, 2018. The Tenant stated that she was told that the reason for the notice was that the Landlord's parents would be moving into the rental unit.

The Tenant stated that she saw online advertisements for the rental unit in April 2018, July 2018 and January 2019, all for \$1,200.00 per month. She stated that there have been two tenants residing in the rental unit since she moved out. The Tenant noted that a car had been seen in the driveway of the rental unit and that a neighbour had witnessed people residing there who were not family members of the Landlord.

The Tenant submitted a letter from a neighbour of the rental unit dated October 9, 2018. In the letter the neighbour states that in July 2018 she witnessed the Landlord talking about rent with a male outside of the rental unit. She noted that they were discussing payment by e-transfer and arranging a move-in date. In the letter the witness further noted that the Landlord had paperwork in their hands and that the same male present at the rental unit has been seen regularly coming and going from the rental unit.

Legal counsel for the Landlord made submissions on behalf of the Landlord and the Landlord's spouse. However, for ease and brevity I will reference the submissions as from the Landlord.

The Landlord stated that the Two Month Notice was served to the Tenant on April 3, 2018 due to plans for their parents to move into the rental unit. They stated that they were assured when purchasing the home that the Tenant would be vacating at the end of the fixed term tenancy agreement. However, when it became clear that this was not the case, they served the Two Month Notice due to plans for their parents to move in. They noted that after the Tenant moved out they completed renovations in the rental unit to make it more accessible for their parents with plans for their parents to move in for November 2018.

The Landlord stated that due to health issues that arose, their parents were no longer able to come to Canada and move into the rental unit. The Landlord submitted a copy of a doctor's report dated April 19, 2019 which states that in September 2018 the

Landlord's mother received a cancer diagnosis and notes that she should not leave the country until treatment has concluded. The Landlord also referenced copies of plane tickets submitted into evidence that they stated were non-refundable and not used as their parents chose to stay in their current country to access medical care.

The Landlord also submitted a letter from their parents dated May 4, 2019 which states that they had planned to move into the rental unit but due to a cancer diagnosis are staying in their current country to receive treatment until able to travel.

The Landlord questioned the witness letter from the neighbour that was submitted by the Tenant as they were unsure who this person was and where they lived in the neighbourhood. The Landlord submitted a letter from another neighbour dated May 6, 2019 which states that the rental unit was empty until recently when it was re-rented.

The Landlord stated that they first posted an advertisement for the rental unit in February 2019 and rented the unit for March 2019. They stated that this was a short-term rental while waiting for their parents to be able to move in for July or August 2019 and to help with the medical bills. They submitted into evidence a print-out of advertisements on an online site showing two advertisements posted in February 2019. They also submitted a copy of the new tenancy agreement showing a tenancy start date of March 1, 2019. They stated that the rental unit had renovation work completed after the end of the tenancy and was empty until the new rental beginning in March 2019.

Analysis

Although the Tenant applied for 12 months of rent compensation pursuant to Section 51 of the *Act*, it was confirmed during the hearing that the Two Month Notice was served to the Tenant on April 3, 2018. As such, I find that this was prior to the change in legislation to Section 51 of the *Act* which came into effect on May 17, 2018. Therefore, it is the prior legislation that applies to this situation and that will be considered in this decision. Section 51(2) of the *Act* at the time the notice was served stated the following:

- (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.

As such, although the Tenant applied for 12 months compensation, I will consider whether she is entitled to 2 months as per the relevant legislation as noted above.

I accept the testimony and evidence of the Landlord and find that they issued the Two Month Notice under Section 49 of the *Act*, with the intent for their parents to move in.

While the Tenant provided testimony and evidence that the rental unit was rented to a non-family member shortly after she moved out, I fail to find sufficient evidence to establish this. The Tenant submitted a letter from a neighbour stating that a potential renter was seen on the property, while the Landlord submitted a letter from another neighbour stating that the rental unit was empty until recently. The Landlord submitted a copy of the tenancy agreement which establishes a rental start date of March 1, 2019.

When two parties to a dispute resolution proceeding provide equally plausible accounts of events, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. In this matter, as this is the Tenant's claim, I find that she has the onus to prove her claim, on a balance of probabilities.

The accepted evidence from the Tenant was a copy of the Two Month Notice and a witness letter from a neighbour. Both parties submitted a letter from a neighbour, each making opposing statements regarding the rental unit and therefore I do not find that either letter on its own establishes what occurred.

However, the Landlord also submitted evidence of online advertisements that were posted in February 2019 as well as documentary evidence that establishes their testimony that their parents were unable to move in as planned due to health issues. As such, I accept the testimony of the Landlord and am satisfied that they submitted sufficient evidence to support their testimony that the rental unit was empty from when the Tenant moved out until March 1, 2019.

As the tenancy ended at the end of June 2018, I find that rental unit remaining empty for a period of approximately nine months satisfies the purpose of the Two Month Notice. Although the Landlord was clear about their specific plans to have their parents move in, I note that the Two Month Notice is not specific in this regard and instead states that the Landlord or a close family member will “occupy” the rental unit. As stated by *Black’s Law Dictionary*, to “occupy” is to hold or keep for use. Therefore, I find that keeping the rental unit empty fits the definition of “occupy”, despite the Landlord being unable to follow through on their specific plans to move their parents into the unit.

As stated in Section 51(2), compensation is awarded if steps have not been taken to accomplish the stated purpose of the notice or the rental unit is not used for that purpose for at least six months. As I am satisfied that the rental unit was not being used by anyone other than the Landlord for a period of approximately nine months, I find that Section 51(2) of the *Act* does not apply in this matter. Instead, I find that the Landlord occupied the rental unit for at least six months following the end of the tenancy. I decline to award any compensation to the Tenant. As the Tenant was not successful with the application, I decline to award the recovery of the filing fee paid for the application. The Tenant’s application is dismissed, without leave to reapply.

Conclusion

The 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 19, 2019

Residential Tenancy Branch