



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

On March 8, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing. The Landlord attended the hearing with V.T. appearing as an agent for the Landlord and with A.W. appearing as counsel for the Landlord. All parties provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package and some evidence to the Landlord by registered mail on March 8, 2019 and the Landlord confirmed that this package was received. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

They also advised that they served the Landlord additional evidence by registered mail on March 27, 2019 and the Landlord confirmed receipt of this package. This evidence was served within the timing requirements in accordance with Rule 3.14 of the Rules of Procedure. As such, I am satisfied that the Landlord was sufficiently served with the Tenants’ evidence and this evidence was accepted and considered when rendering this decision.

The Landlord advised that his evidence was served to the Tenants by hand on June 11, 2019 and the Tenants acknowledged that they received this evidence. This evidence was served within the timing requirements in accordance with Rule 3.15 of the Rules of Procedure. As such, I am satisfied that the Tenant was sufficiently served with the

Landlord's evidence and this evidence was accepted and considered when rendering this decision.

In accordance with Rule 3.19 of the Rules of Procedure, an Arbitrator may provide direction on requesting late evidence. A copy of the Two Month Notice for Landlord's Use of Property (the "Notice") that is the subject of this dispute was requested to be provided by both parties as it is essential to the matter at hand. Both parties provided me with a copy of this Notice that is in dispute by fax after the hearing concluded.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Notice?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that most current tenancy started on February 1, 2017 and the tenancy ended when the Tenants vacated the premises on October 31, 2018. Rent was established at \$2,000.00 per month and was due on the first of each month. A security deposit of \$700.00 was also paid.

All parties agreed that the Tenants were served with the Notice dated August 26, 2018. The reason the Landlord checked off on the Notice was because "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 Landlord indicated on the Notice that the effective date of the Notice was October 31, 2018.

However, the Tenants advised that after they vacated the rental unit, the Landlord did not use the property for the stated purpose. The Tenants are seeking compensation in the amount equivalent to twelve months' rent (**\$24,000.00**) as they were served the Notice and the Landlord failed to use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

They stated that the Landlord moved into the rental unit in October 2018 and vacated the rental unit on January 27, 2019. However, their position is that they are owed this compensation pursuant to Section 51(2) of the *Act* as the Landlord did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice. They stated that they received a phone call from a friend on January 29, 2019, advising them that the Landlord moved out of the rental unit on January 27, 2019. On January 30, 2019, they took pictures of the rental unit and talked to neighbours to confirm that the Landlord had vacated the rental unit. Then, on February 10, 2019, they received another message advising that new tenants were moving into the rental unit, and they took pictures of this. An ex-neighbour called them on March 2, 2019 to advise them that a family of five had moved into the rental unit and the Tenants met with the new tenants of the rental unit on March 4, 2019. They submitted pictures and referenced documentary evidence to support their position.

Counsel did not dispute the submissions laid out by the Tenants. He stated that the Landlord moved into the rental unit while waiting for his new house to be built in the next six to eight months. However, due to favourable weather conditions, this house was completed faster than anticipated. He advised that the Landlord could not simultaneously afford mortgages on both houses, so he vacated the rental unit, re-rented it, and then moved to his new house. He referenced mortgage payments submitted as documentary evidence to support this point. He stated that the Landlord did not issue the Notice or move in bad faith as it was his intention all along to live in the rental unit while waiting for the new house to be completed. In addition, he submitted that as the Landlord rented the rental unit for the same amount of rent, this demonstrates that he was not doing something underhanded. He also advised that the Landlord wanted to offer the rental unit back to the Tenants, but they had already rented a place. He made a reference to a first right of refusal that he had "read somewhere".

The Landlord advised that they were building a new house and were anticipating a completion date of six to eight months away; however, the home was built sooner than anticipated. He is not disputing that he moved from the rental unit into his new house after three months, and subsequently rented out the rental unit. Nevertheless, his

intention was never to evict the Tenants only to re-rent to someone else. His genuine intention was to live there until his house was complete in six months or so. Otherwise, he would have never re-rented the rental unit to new tenants at the same amount of rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this decision are below.

With respect to the Tenants' claim for twelve-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on August 26, 2018 and Section 51 of the Act changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 (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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

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

(b) 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.

Furthermore, Section 51.2 of the Act outlines the right of first refusal as per below:

Right of first refusal

- 51.2** (1) *In respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives a notice under section 49 (6) (b) is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so.*
- (2) *If a tenant has given a notice under subsection (1), the landlord, at least 45 days before the completion of the renovations or repairs, must give the tenant*
- (a) a notice of the availability date of the rental unit, and*
 - (b) a tenancy agreement to commence effective on that availability date.*
- (3) *If the tenant, on or before the availability date, does not enter into a tenancy agreement in respect of the rental unit that has undergone the renovations or repairs, the tenant has no further rights in respect of the rental unit.*
- (4) *A notice under subsection (1) or (2) must be in the approved form.*

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that “A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.”

This policy guideline also provides the following information about the right of first refusal by stating that “Section 51.2 of the RTA provides tenants of multi-unit residential properties (containing more than 5 units) who receive a notice to end tenancy for renovation or repair under section 49 (6) (b) with a right of first refusal to enter into a new tenancy agreement for the rental unit when the renovations or repairs are complete.”

Finally, the policy guideline outlines the following about extenuating circumstances: “An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- 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.

The following are probably not extenuating circumstances:

- A 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

When reviewing the totality of the evidence before me, at the time the Notice was served, the Landlord advised that his intention was to move into the rental unit and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* and used the rental unit for the stated purpose for at least six months after the effective date of the Notice. As the Landlord does not dispute this, I am satisfied that the Landlord has failed to use the rental unit for the stated purpose as per the *Act*.

While the Landlord advised that the extenuating circumstance that prevented him from using the rental unit for the stated purpose for at least six months was because his new home was unexpectedly built faster than anticipated, I am not satisfied that this would constitute an extenuating circumstance. I find that this is a logical, potential outcome that could have been anticipated when constructing a new house. Consequently, I am not satisfied that there were any extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Ultimately, I am satisfied that the Tenants have substantiated their claim that they are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act* in the amount of **\$24,000.00**.

With respect to counsel's vague reference to the right of first refusal, I find it important to note that the right of first refusal only applies to a residential property containing five or more rental units. As this is not the case with this rental unit, I am satisfied that this is not applicable in this situation.

As the Tenants were successful in their claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Compensation for not using the rental unit for at least six months	\$24,000.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$24,100.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$24,100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 24, 2019

Residential Tenancy Branch