



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-T

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on March 15, 2019, as amended by an Amendment to an Application for Dispute Resolution (the "Amendment"), which was received at the Residential Tenancy Branch on June 4, 2019 (the "Application"). The Tenants applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Residential Tenancy Act* (the "Act"):

The Tenants and the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenants testified the Landlord was served with the Application package by registered mail. The Landlord acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*.

In addition, the Tenants testified that they served the Landlord with the Amendment by registered mail. The Landlord denied receipt and the Tenants did not submit documentary evidence in support of service by registered mail. Therefore, the Amendment has not been considered in this Decision. In any event, it appears the Tenants increased the amount of other claim based on a provision of the *Criminal Code*. The Tenants were advised that the director has no jurisdiction over criminal matters and that it I would be unable to grant the relief sought.

Further, the Tenants testified that they served the Landlord with additional documentary evidence by Express Post. The Landlord denied receipt and the Tenants did not submit documentary evidence in support of service by registered mail. Therefore, the additional documentary evidence has not been considered in this Decision.

The Landlord did not submit documentary evidence in response to the Application.

No further issues were raised with respect to service or receipt of the documents referred to above. The parties were in attendance and were prepared to proceed. The parties were provided with a full opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure and to which I was referred. However, I refer to only the relevant facts and issues in this Decision.

Issues

Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed the tenancy began about 2-1/2 years ago and ended on January 31, 2019. The parties agreed that rent in the amount of \$950.00 per month was due on the first day of each month. The Tenants paid security and pet damage deposits that were repaid to the Tenants at the end of the tenancy.

The Tenants seek compensation under section 51 of the *Act*. They testified they were served with a Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 22, 2018 (the "Two Month Notice"). Although the Two Month Notice was not submitted into evidence by the parties, the Tenants and the Landlord referred me to a previous dispute resolution proceeding. The Tenants disputed the Two Month Notice, which was issued on the basis that the rental unit would be occupied by the Landlord or a close family member of the Landlord. The parties agreed I could refer to documents related to the previous dispute resolution proceeding. The file number of the related proceeding is included above for ease of reference.

On examination of the documents related to the previous hearing, I note the parties entered into a "full and final" settlement agreement of the issues between them, pursuant to section 63 of the *Act*. The settlement, documented in a decision issued on January 9, 2019, confirms the parties' agreement that the tenancy would end on January 31, 2019.

The Tenants submit they are entitled to compensation because the Landlord did not move into the rental unit, other than to complete some renovations. They testified that after the renovations were complete, the Landlord listed the rental unit for sale in or about March 2019. A screen print of a Multiple Listing Service relating to the rental unit was submitted into evidence.

In reply, the Landlord acknowledged that he lived in the rental unit for approximately 4 weeks while completing some renovations, and then listed the unit for sale. However, he testified that he had to take this action because the Tenants' dispute of the Two Month Notice caused him to lose a local employment opportunity, forcing him to seek work elsewhere.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 51(2) of the *Act* confirms that a landlord who issues a notice to end tenancy for landlord's use of property must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement if 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 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.

However, section 51(3) of the *Act* permits the director to excuse the landlord from paying compensation if, in the director's opinion, extenuating circumstances prevented the landlord from accomplishing the stated purpose for ending the tenancy for or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, it has not been necessary to consider the Tenants' entitlement to compensation under section 51(2) of the *Act*, or whether or not there are extenuating circumstances that would excuse the Landlord from an obligation to pay compensation under section 51(3) of the *Act*. Rather, the parties referred me to a previous dispute resolution proceeding, during which the parties reached a settlement agreement. Specifically, in a decision issued on January 9, 2019, the parties agreed the tenancy would end on January 31, 2019, which was 30 days after the effective date of the Two Month Notice. Stated another way, the tenancy did not end based on the validity of the

Two Month Notice but on the parties' desire to end the tenancy by agreement. Accordingly, I find it is not open to the Tenants to seek compensation after entering into a mutual agreement to end the tenancy. Therefore, the Application is dismissed, without leave to reapply.

Conclusion

The Application 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 21, 2019

Residential Tenancy Branch