



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE STERLING
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 83 minutes. The two individual landlords, male landlord ("landlord") and "female landlord" (collectively "landlords"), the landlords' lawyer, the landlord company's agent ("property manager"), and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed that their lawyer had permission to speak on their behalf. The property manager confirmed that she had permission to represent the "landlord company" named in this application. The tenant confirmed that she had permission to represent the male tenant.

During the hearing, the landlords' lawyer asked to be the English Language Translator for the landlords. She said that the landlords required assistance with the language and that she could provide it. The lawyer also provided witness testimony during the hearing, rather than providing submissions or translating on behalf of the landlords. I had to frequently remind the lawyer to translate information to the landlords, rather than providing her own testimony during the hearing.

The landlords' lawyer confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and both tenants were duly served with the landlords' evidence package.

The tenant confirmed receipt of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 18, 2018 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlords' 2 Month Notice.

At the outset of the hearing, there was a discussion about whether the landlord company should be removed as a landlord-respondent from this application. The tenant stated that she did not want to remove the landlord company. I allowed the property manager from the landlord company to attend this full hearing in order to provide testimony, as it was relevant to this proceeding. **However, this decision and monetary order are effective against the two individual landlords only, as they are the owners of the rental unit and issued the 2 Month Notice, not the landlord company that was only the property manager for the owners.**

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2012 and ended on January 31, 2019. Monthly rent of \$1,548.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants and the landlords

returned the full deposit to the tenants. A written tenancy agreement was signed by both parties.

Both parties agreed to the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice, and received one month rent free compensation. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the 2 Month Notice was January 31, 2019. The reason indicated on the 2 Month Notice was:

- *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 tenants seek compensation under section 51(2) of the Act for twelve months of rent reimbursement of \$1,548.00, totaling \$18,576.00, plus the \$100.00 application filing fee. The tenants claim that because the landlords did not use the rental unit for the purpose on the 2 Month Notice, they are entitled to compensation. The landlords dispute the tenants' application.

The tenant stated that the landlords did not use the 2 Month Notice for the reason indicated on it. She claimed that the landlords posted the rental unit for re-rental one month after the tenants moved out. She said that it was listed for rent for \$500.00 more per month, than what the tenants were paying for monthly rent during their tenancy. She stated that the landlords fired their old property manager and hired a new one, the landlord company named in this application. She maintained that the tenants were evicted to re-rent the unit at a higher rent amount. She claimed that the tenants' rent was last increased in November 2018, shortly before they moved out.

The landlords dispute the tenants' claims. They stated that while they did not move back into the rental unit, but rather re-rented it, it was due to extenuating circumstances. They claimed that they have a young daughter and moved from China to Canada around August or September 2018. They stated that they fully intended to move back to Canada permanently and live in the rental unit. The landlords provided a copy of a month-to-month tenancy agreement beginning on September 1, 2018, for the unit they first moved to, in another city from where the rental unit is located. They stated that their daughter had a friend in school in that city, so they wanted to help her adjust to the schooling system in Canada. They provided copies of a health card and school documents for their daughter. They claimed that they could not stay in the rental unit because the tenants were residing there at the time, so they had to rent another place.

They explained that they did not want to rent this other unit long term because they owned the rental unit so they wanted to move back in, after the tenants vacated.

The landlord claimed that he received a very lucrative job offer in China on October 18, 2018, after the 2 Month Notice was issued to the tenants on the same date. He maintained that he had been looking for a job in B.C. but was unable to find one. He stated that it all happened very quickly and he accepted the job, which included probation of six months, after signing the contract on October 22, 2018. The landlords provided a partial copy of the employment contract. They also provided a copy of a letter, dated October 10, 2018, which they said they provided to the tenants, indicating that the landlords intended to move back into the rental unit. He maintained that even though this was not a formal Residential Tenancy Branch ("RTB") notice like the 2 Month Notice, it shows the landlords' intention to move into the rental unit, prior to the landlord receiving the job offer.

The landlords explained that they moved back to China with their daughter at the end of October 2018, so that the landlord could work in his new job. The landlord claimed that he was verbally assured by his employer in mid-February 2019 that he would likely pass probation with no issue. He claimed that in mid-to-late February 2019, he went to a new property management company, recommended by his friend, in order to relist the rental unit for re-rental as of March 1, 2019. He said that if he had not passed probation, he would have moved back to the rental unit in Canada with his family. He maintained that getting a permanent job in this role was competitive, as three people were in the same role prior to the landlord, and had all left. So he maintained that he had to wait until he passed probation before he could decide what to do with the rental unit. The landlord explained that even though the 2 Month Notice was effective on January 31, 2019, well before his probation end date, he wanted the rental unit vacant for his return from China. He stated that his realtor told him it would take three months to evict the tenants with the 2 Month Notice, so he gave it early.

The landlords' property manager testified that she was contacted by the landlords' friend at the end of February 2019 and given the keys to the rental unit, in order to re-rent the unit on behalf of the landlords. She claimed that she posted rental advertisements a few days before March 1, 2019, and got it rented quickly because it was vacant. She stated that she was not given any details about the landlords or the circumstances of the re-rental. She maintained that the rental unit was re-rented on April 1, 2019, to new tenants, for a fixed term of one year after which it becomes a month-to-month tenancy, at a rent of \$2,050.00 per month.

Analysis

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the landlords do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

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.

The following facts are undisputed. The tenants vacated the rental unit on January 31, 2019, pursuant to the 2 Month Notice, which was issued by the landlords to move into the unit. The landlords re-rented the property as of April 1, 2019, for a fixed term of one year at a higher rent of \$2,050.00, less than 6 months after the effective date of the 2 Month 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.

I find that the landlords failed to show extenuating circumstances prevented them from using the rental unit for the purpose in the 2 Month Notice. The landlords claimed that they first moved to Canada by September 1, 2018, so they could have issued a 2 Month Notice to the tenants at that time, rather than signing a new tenancy agreement, for a

unit in a different city, if they truly intended to move back into the rental unit. I do not accept that the landlords wanted to stay in a different city because their daughter had a friend at school there, because they still issued the 2 Month Notice to the tenants over 1.5 months later on October 18, 2019.

The landlord was aware of his job offer in China on at least October 18, 2018, the same day that the 2 Month Notice was issued to the tenants. Even if the landlord found out about the job offer after serving the 2 Month Notice to the tenants, he had almost 3.5 months to cancel the notice before the effective date of January 31, 2019.

The landlords' claim that it would take three months to evict the tenants, as per their realtor's information, when it clearly says on the notice that it is a 2 Month Notice, is not believable.

The landlords moved back to China with their daughter at the end of October 2018, showing that their intention was to live in China at least for the probationary period, which was due to end on March 22, 2019, according to the landlords. This was almost two months past the effective date of the 2 Month Notice, January 31, 2019.

The landlord was aware that he had to pass probation in order to get a position with the company. I do not accept that the landlord was worried about being fired or the competition, requiring him to return to Canada, because he hired a new property manager to post advertisements for re-rental in February 2019, for the rental unit to be available by March 1, 2019. This was all prior to the landlord receiving a formal written letter from his employer, confirming that he passed probation, on March 22, 2019. I do not accept that the landlord would simply accept a verbal confirmation in February 2019, from his employer that he would pass probation, if he was so concerned about passing probation in the first place.

I also note that the landlords made a significant profit from re-renting the property at a higher rent profit of \$502.00 per month, for a total of \$6,024.00 for a one year fixed term.

Therefore, I find that the landlords breached section 51(2)(b) of the *Act*, as the landlords or their close family members did not occupy the rental unit for at least six months after the tenants vacated on January 31, 2019. I find that the landlords failed to show extenuating circumstances prevented them from doing so.

Accordingly, I find that the tenants are entitled to twelve times the monthly rent of \$1,548.00, as compensation under section 51 of the *Act*, which totals \$18,576.00, from the two individual landlords.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the two individual landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$18,676.00, against the two individual landlords. The two individual landlords must be served with this Order as soon as possible. Should the two individual landlords 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: July 19, 2019

Residential Tenancy Branch