



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation.

The Tenant was present for the teleconference hearing, as were both Landlords. Only Landlord A.R. presented testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant stated that she received the Landlords’ evidence the evening before the hearing. The Landlords’ evidence was also submitted to the Residential Tenancy Branch the day prior to the hearing.

As the Landlords’ evidence was not submitted to the Residential Tenancy Branch or served to the Tenant at least 7 days prior to the hearing as required by rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*, it is not accepted and will not be included in this decision. This decision will be based on the documentary evidence of the Tenant as well as the verbal testimony of both parties.

The 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

The Tenant applied for compensation in the amount of \$11,100.00, which is the equivalent of 12 months compensation pursuant to Section 51(2) of the *Act*. During the hearing the Tenant stated that she is also seeking an additional one month compensation due to receipt of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to Section 51(1) of the *Act*.

However, the Application for Dispute Resolution does not include this additional claim and instead states that the Tenant is seeking 12 months compensation in the amount of \$11,100.00. The Tenant confirmed that she made an error and did not note the additional claim on the application or file an amendment to add the additional claim to the application. As stated by rule 2.2 of the *Rules of Procedure*, the claim is limited to what is stated in the application. As such, I find that it may prejudice the Landlords to add an additional monetary claim to the application.

Therefore, this decision will address the monetary claim of the Tenant as stated on the application which is the Tenant's claim for \$11,100.00. Both parties are at liberty to file a new application should there be any outstanding claims from this tenancy.

Landlord A.R. clarified his legal name at the hearing. As the Application for Dispute Resolution stated his first name with initials only, the application was amended to include his legal name as stated by the Landlord. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issue to be Decided

Is the Tenant entitled to monetary compensation?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy started on April 1, 2012 and the Tenant moved out on December 2, 2018. Monthly rent at the end of the tenancy was \$925.00. The Tenant paid a security deposit at the start of the tenancy which has since been returned.

The Tenant provided testimony that on or around November 12, 2018 she was served with a Two Month Notice. She stated that her understanding at the time was that one or both of the Landlords would be moving into the rental unit.

The Two Month Notice was included in evidence and although dated February 28, 2019, both parties confirmed that this was the effective end of tenancy date and that the notice was served in November 2018. The Two Month Notice 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 Tenant stated that although the tenancy was to end on February 28, 2019, she provided notice to move out earlier and moved out on December 2, 2018. The Tenant submitted a copy of her notice to end the tenancy earlier, dated November 27, 2018.

The Tenant testified that she attended the rental unit on February 2, 2019 to get some of her belongings that remained on the property and that the Landlord told her at this time that their nieces had moved into the rental unit. The Tenant submitted a letter from a friend who was present at this time. The letter dated February 6, 2019 states that the Landlord told the Tenant that their two nieces moved in on January 15, 2019.

The Tenant is requesting 12 months of compensation pursuant to Section 51 of the *Act* due to her belief that the Landlords did not use the rental unit for the stated purpose of the Two Month Notice.

The Landlord agreed that the Two Month Notice was served on or around November 12, 2018. He stated that his son had recently gotten married and intended to reside in the rental unit with his wife. The original plan was for their son to move in for March 2019, after the effective end of tenancy date of the Two Month Notice had passed.

However, the Landlord stated that since the Tenant moved out early, their son moved into the rental unit in December 2018. The Landlord submitted that their son's wife arrived from another city later in December 2018 and after viewing the rental unit, decided that she did not want to live there. The Landlord stated that their son moved out on January 10, 2019 and found a new place to reside with his wife.

The Landlord stated that he had two nieces that needed a place to stay so he let them live in the rental unit for free for about six weeks. He testified that they are still residing in the rental unit although they are now paying rent.

Analysis

The parties agreed that a Two Month Notice was served to the Tenant in November 2018 pursuant to Section 49(3) of the *Act*. The Tenant applied for 12 months compensation pursuant to Section 51(2) of the *Act* which states the following:

(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.

However, Section 51(3) also notes that a landlord may be excused if there are extenuating circumstances which prevented the landlord from accomplishing the stated purpose of the Two Month Notice within a reasonable time period.

Residential Tenancy Policy Guideline 50 defines 'extenuating circumstances' as those where it would be unreasonable for a landlord to pay compensation due to circumstances outside of their control. An example of this would be plans for a parent to move in but the parent passes away.

The Landlord testified that his son and wife had plans to move in but changed their mind after the son resided in the rental unit for a period of approximately one month. I do not find that there were any extenuating circumstances present that prevented the Landlord or a close family member occupying the rental unit as stated on the Two Month Notice and instead found that the son and his wife changed their mind.

I also do not find that residing in the rental unit for a period of one month to be considered accomplishing the stated purpose of the notice. As stated in Section 51(2)(b) of the *Act*, a tenant may be entitled to compensation if the rental unit is not used for the stated purpose *for at least 6 months*.

Instead, the tenancy was ended with the Two Month Notice and it seems that the notice was served prior to confirming plans with the Landlord's son and his wife, leading to the son residing in the rental unit for a period of only one month.

I also note that Section 49(1) of the *Act* provides a definition of 'close family member' as follows:

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse

Therefore, a daughter-in-law or a niece does not meet the definition of close family member under the *Act*. Although the Landlord's son is a close family member, as mentioned, I do not find the son occupying the rental unit for a period of one month to be sufficient for ending the tenancy with a Two Month Notice. The Landlords' nieces moving into the rental unit would not be a reason for ending the tenancy with a Two Month Notice.

Accordingly, I find that the Tenant has established that the rental unit was not used for the stated purpose of the Two Month Notice for a period of at least six months, and therefore that she is entitled to 12 months of compensation pursuant to Section 51(2) of the *Act*.

As the parties agreed that rent at the end of the tenancy was \$925.00 per month, I award the Tenant \$11,100.00.

Conclusion

Pursuant to Sections 51 and 67 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$11,100.00** as outlined above. The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the 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 2, 2019

Residential Tenancy Branch