



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

On March 13, 2019, the Tenant 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*.

Both the Tenant and the Landlord attended the hearing. All parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and her evidence to the Landlord by registered mail on March 21, 2019 and then again on March 31, 2019. 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.

The Landlord advised that her evidence was served to the Tenant’s daughter by hand on June 10, 2019 and the Tenant acknowledged that she received this evidence. This evidence was served within the timeframe 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.

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

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”)?

- Is the Tenant 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 agreement started on March 1, 2014 and the tenancy ended when the Tenant vacated the premises on November 30, 2018. Rent was established at \$795.00 per month and was due on the first of each month. A security deposit of \$397.50 was also paid. As well, they agreed that the Landlord purchased the rental unit and received possession of it on December 1, 2018.

All parties agreed that the Tenant was served with the Notice on September 19, 2018. The reason the Landlord checked off on the Notice was because "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The Landlord indicated on the Notice that the effective date of the Notice was November 30, 2018.

The Tenant submitted that during the sale process, she was advised by the realtor that she "could probably stay in the rental unit", but after the inspection on June 23, 2018, she was told that that purchaser would be using the entire house and that the rental unit might be used as an AirBnB. However, she stated that these types of rentals were not permitted by the Strata. She stated that the purchaser then went through the rental unit and mentioned the improvements that she wanted to make. She submitted that the realtor should have been clear with the purchaser's intentions.

She advised that after she vacated the rental unit, the Landlord did not use the property for the stated purpose. As such, she is seeking compensation in the amount equivalent to twelve months' rent (**\$9,540.00**) pursuant to Section 51(2) of the *Act* as she was 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.

She stated that the rental unit is two levels below grade, that there are many narrow stairs, and that as the Landlord's mother is elderly, she questioned the likelihood that the mother could really move in. She stated that a more reasonable scenario would be for the mother to have moved into the upper unit.

She referenced the Contract of Purchase and Sale of the property and noted that it stated the purchaser would use the whole main upper portion only, but then it was changed. As well, she advised that this contract indicated that she could possibly have stayed in the rental unit.

The Landlord advised that there was a mistake on the Contract of Purchase and Sale and that no one can be certain of what the realtor advised the Tenant of. She stated that she never informed the Tenant of her intent for the rental unit, but it was her intention to have her mother move into the rental unit to have her closer and easier to be cared for. She submitted that it was her plan to have her mother move in after Christmas; however, her mother had a stroke in January 2019, she is still in the hospital, and she is unable to move or live without full time care. She submitted a letter from a medical professional, as documentary evidence, indicating that her mother "is currently admitted in hospital since January 3rd, 2019 and is on a waiting list for residential care. She is unable to live on her own and requires full care." As well, she referenced an invoice for the cost of a care facility for her mother to support this position. She advised that as her mother was unable to move in, she then re-rented the rental unit on March 15, 2019.

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 Tenant's claim for twelve-months' compensation owed to her 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 September 19, 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.

With respect to this situation, I find it important to note that Policy Guideline # 50 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 her intention was to have her mother 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* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

As there is no dispute that the Landlord re-rented the rental unit in March 2019, I am satisfied that the Landlord has failed to use the rental unit for the stated purpose as per the *Act*. However, the Landlord advised that the extenuating circumstance that prevented her from using the rental unit for the stated purpose for at least six months was because her mother suffered an unexpected health condition that prevented her from being able to move into the rental unit. Based on the medical evidence before me, I am satisfied that this situation would constitute an extenuating circumstance that could not be foreseen, and this prevented the Landlord from using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

As such, I am satisfied that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*.

As the Tenant was not successful in her claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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: July 4, 2019

Residential Tenancy Branch