



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

On April 5, 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. As well, S.H. attended the hearing as a witness for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and some evidence to the Landlord by registered mail on April 9, 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 some evidence.

She also advised that she served additional evidence to the Landlord by registered mail on June 21, 2019. The Landlord acknowledged that he received this evidence and that he was prepared to respond to it. While this evidence was not served within the timeframe requirements in accordance with Rule 3.14 of the Rules of Procedure, as the Landlord was prepared to respond to it, this evidence was accepted and considered when rendering this decision.

The Landlord advised that his evidence was served to the Tenant by registered mail on June 17, 2019 and June 22, 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 the tenancy agreement started on August 15, 2014 and the tenancy ended when the Tenant vacated the premises on November 5, 2018. Rent was established at \$2,000.00 per month and was due on the fifteenth of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were also paid.

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 effective date on the Notice was noted as November 1, 2018.

The Tenant submitted that she was not made aware that the Notice might be served, and she speculated that the Landlord's purpose for serving the Notice was as retribution for the Landlord's belief that the Tenant was responsible for the poor condition of the rental unit. She stated that after she asked the Landlord to fix the heat pump again on August 9, 2018, she received the Notice promptly. She advised that she made attempts to contact the Landlord, she suggested that the Landlord's daughter could have moved into another area of the house, and she questioned how the daughter would utilize the 2,300 square foot rental unit; however, she received no reply. She stated that the Landlord also mentioned renovations required to the rental unit.

She advised that she rented a new place nearby and occasionally walked her dog by the rental unit over the subsequent months. She submitted photos of multiple days

where junk mail was left on the door, newspapers were left on the porch, where the lights were off, and the blinds were open. She cited the bathroom window blinds being open continually as being particularly curious because anyone using the bathroom would be completely exposed. She submitted that she looked in the windows of the rental unit, she saw no one living in there, she did not see any furniture, and that she knocked on the door and no one answered. Due to her job, she advised that she is trained in determining if houses are vacant and it is her opinion that no one is living there. As well, she stated that she asked the neighbours if they had seen anyone living there or any vehicles parked there, and they confirmed that no one had moved in; however, she was unsuccessful in obtaining anything in writing from the neighbours confirming this. As such, she is seeking compensation in the amount equivalent to twelve months' rent (**\$24,000.00**) 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.

The Landlord advised that his daughter wanted to move back into town after university and he suggested that she move into the rental unit, which she agreed with. He stated that she moved into the rental unit towards the end of November 2018, has lived there since, and has been paying \$1,000.00 per month in rent. He submitted utility bills, address change forms, a notice of assessment, a driver's licence address change, and various other documents to support his position that his daughter lives in the rental unit.

S.H. advised that she graduated from university and wanted to move back home, so she made the decision to do so in August 2018 once school was done. She moved back into the rental unit in November 2018 and is still living there currently. She submitted that she goes to work, and she primarily studies at the rental unit, but she has entertained friends there as well. She stated that she will occasionally stay with other friends, but she lives and sleeps mostly at the rental unit. She advised that the rental unit is furnished with furniture that they had owned, with the exception of a bed that was purchased, but she admits that it is sparsely furnished. As per Rule 7.21 of the Rules of Procedure, the Tenant was allowed to cross examine S.H.

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.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

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 dated August 13, 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.

When reviewing the totality of the evidence before me, at the time the Notice was served, the Landlord advised that his intention was to have his daughter 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.

I understand the Tenant's concerns with respect to her doubts that the Landlord did not use the property for the stated purpose; however, the reason for the Notice was that the Landlord or close family member would occupy the rental unit. In addition, the burden of proof is on the Tenant to substantiate her claims. While she has provided much evidence and testimony about her doubts that the rental unit is occupied, I find that most

of this is based on speculation, without definitive evidence such as statements from others confirming that the rental unit is indeed vacant.

When weighing this against the Landlord's documentation and the affirmed testimony of his daughter that she lives in the rental unit, I do not find that the Tenant's evidence is persuasive or compelling enough to outweigh the Landlord's evidence that his daughter moved into the rental unit in or around November 2018. Therefore, on a balance of probabilities, I am satisfied that the Landlord used the property for the stated purpose and did not contravene the *Act* in this circumstance. 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*, and I dismiss her claim on this issue in its entirety.

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 10, 2019

Residential Tenancy Branch