



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

On April 28, 2019 a hearing was held in response to an application made by the tenant. On May 1, 2019, the tenant was granted a monetary order in the amount of \$10,900.00.

On May 22, 2019, the purchaser made an application for review consideration, which was granted on May 25, 2019, on the basis that they were unable to attend at the original hearing because of circumstances that could not be anticipated and were beyond their control. The Arbitrator, ordered the parties to participate in a new hearing, and the original decision and order was suspended.

At the new hearing I may confirm, vary, or set aside the original decision and order.

This new hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order pursuant to section 51(2) of the Act.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue to Decide

Is the tenant entitled to a monetary order under the Act?

Background and Evidence

The tenant testified that the previous landlord stated that the purchaser was interested in renting to them and wanted to have a meeting. The tenant stated that they told the landlord that they wanted to talk to the Residential Tenancy Branch (the "RTB") first.

The tenant testified that after they talked to the RTB they informed the landlord that they were willing to meet with the purchaser; however, they were told that the purchaser was no longer interested in renting to them.

The tenant testified that on August 14, 2018, they were given a Two Month Notice to End Tenancy for Landlord's Use of Property, with an effective vacancy date of October 31, 2018.

The reason for ending the tenancy stated on the Notice is:

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 tenant testified that they did not find new rental accommodation until the middle of October 2018. The tenant stated on October 18, 2018, they received an email asking if they were interested in staying in the rental unit by the landlord's property manager. The tenant stated that it was offered to stay was too late, as they had already arranged to move.

The tenant testified that it was approximately 14 days after they vacated the rental unit that they found the rental unit advertised on a popular website. The tenant stated that the rent was significantly higher, as it was advertised at the monthly rate of \$1,200.00 plus utilities. The tenant stated that their rent was \$900.00 per month.

The tenant testified that shortly after that there was new person living in the rental unit. The tenant stated that the purchaser did not use the property for the stated reason in the notice to end tenancy.

The purchaser testified that they did re-rent the premises as stated by the tenant. The purchaser stated that they had planned for their father-in-law to come and live in the basement; however, they changed their mind.

The purchaser testified that the tenant was asked if they wanted to stay in the rental unit; however, they chose to leave.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances. The arbitrator has no authority to vary or alter the amount of compensation.

In this case, I find the purchaser did not use the property for the stated reason. Further, I question the credibility of the purchase, as they were intending to rent to the tenant if they had a meeting. It was only after the tenant informed them that they wanted to talk to the RTB before they had the meeting that the tenant was served with the notice to end tenancy.

Further, even if I accept the purchaser testimony, which I do not, that their family members decided not to move in, I find that is not an extenuating circumstance, and this could have been foreseen with proper planning. I find that is an issue between the purchase and their family member, and not the tenant.

Although I accept the purchaser asked the tenant if they wanted to stay in the rental premises on October 18, 2018; however, the tenant had already made alternate living arrangements. I find it more likely than not that the purchase knew that the tenant was already leaving as this was foreseeable as they were required to vacate on October 31, 2018.

The purchaser advertised the rental unit and found a new renter shortly after the tenant vacated at a significantly higher rent.

I find the purchaser has violated the Act, when they did not use the rental unit for the purpose stated in the notice to end tenancy. I find the tenant is entitled to the equivalent of 12 months' rent as compensation. As the tenant was paying \$900.00 per month in rent, I grant the tenant the amount of \$10,800.00 in compensation.

I find the tenant has established a total monetary order in the amount of \$10,900.00 comprise of the above amount and the \$100.00 filing fee for the cost of this application.

In light of the above, I vary the original decision and confirm the original monetary order made on May 1, 2019.

Conclusion

The original decision is varied and the original monetary order is confirmed.

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 11, 2019

Residential Tenancy Branch