



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This was scheduled to deal with a tenant's application for a Monetary Order for compensation payable to tenants where a landlord does not use the rental unit for the purpose stated on a *2 Month Notice to End tenancy for Landlord's Use of Property* ("2 Month Notice") as provided under section 51(2) of the Act.

The landlord appeared along with his wife, who was identified as a co-landlord, the landlord's daughter, who was identified as a witness, and legal counsel. The application named two co-tenants, referred to by initials DM and HM; however, only HM appeared.

Preliminary Matters

The landlord's daughter was excluded from the proceeding until called to testify.

I confirmed that the parties had exchanged their respective hearing documents and evidence upon each other. The tenants had referred to a video in their details of dispute. The landlord stated that a video was not included in the package served upon him. HM explained that the link to the video was provided in the details of dispute but that a digital copy of the video was not served. I also noted that I did not have a copy of a video in the evidence uploaded to the Residential Tenancy Branch but that a link was provided in the details of dispute. I heard the video was to demonstrate the landlord put the rental unit up for sale on May 4, 2018, shortly after the rental unit was renovated. The landlord did not deny those facts. Accordingly, I found it unnecessary to give further consideration to ordering the video to be served or excluding video evidence.

Procedural Matters

As stated previously, the application identifies two co-tenants, DM and HM and only HM appeared at the hearing. Upon review of the tenancy agreement, I note that DM is named as a tenant and HM is listed as an adult occupant of the rental unit but not as a tenant. I also note that the subject 2 Month Notice identifies only one tenant: DM. Based on the documentation before me, it appears to me that the only tenant with standing is DM. Since this application was made online there is no signature of the applicants. I note that all of the evidentiary uploads by the applicants were made by HM. I was not provided any letter of authorization from DM indicating HM would represent him in this proceeding. Nor, did DM appear at the hearing to orally confirm that HM is authorized to make this claim on his behalf. However, neither the landlord nor his legal counsel raised an issue with respect to HM being named as a tenant or making representations on behalf of DM and I permitted the parties to present their respective positions and evidence to me.

In summary, the tenancy ended pursuant to a *2 Month Notice to End Tenancy for Landlord's Use of Property* served on January 17, 2018 with a stated effective date of March 31, 2018. HM stated the rental unit was vacated by March 31, 2018; however, the landlord testified that it ended earlier, on March 1, 2018 after the tenant gave the landlord 10 days of notice. It was undisputed that the rental unit was renovated shortly after the tenancy ended and then listed for sale, twice. The tenant stated the rental unit was sold in February 2019; however, the landlord testified that it was taken off the sales market in February 2019 without being sold. It was undisputed that the unit remained vacant for many months after the tenancy ended. I heard the landlord's son moved into the rental unit in September 2018 although there was no corroborating evidence to support that is when the landlord's son moved into the rental unit. There is some evidence to suggest the landlord's son may be moved into or intended to move into the rental unit much later, in March 2019.

The primary position of the tenant(s) was that the rental unit was renovated and listed for sale with the intention of "flipping" the property and that the landlord, or close family member, did not move into the rental unit. The tenant(s) requested compensation equivalent to 12 months of rent or \$16,978.44 which is consistent with the compensation provision of section 51(2) as it was amended by Bill 12 on May 17, 2018.

The landlord's primary position was that the landlords intended to move into the rental unit but that "extenuating circumstances" prevented them from doing so. The landlord's documentary evidence largely related to supporting their position of "extenuating circumstances". The landlord's daughter was also called to testify about the

“extenuating circumstances” that occurred and was cross examined. The landlord also testified that his son moved into the rental unit in September 2018, although this position was not supported by corroborating evidence, and did not appear to be the landlord’s primary argument.

The landlord’s lawyer argued that the compensation claimed by the tenant(s) under section 51(2) is not payable due to “extenuating circumstances” as provided under section 51(3) of the Act and the tenant made submissions calling into question whether “extenuating circumstances” prevented the landlord or close family member moved into the rental unit.

As described above, both parties focused on the legislation, primarily subsections 51(2) and (3) as they currently written and took effect as of May 17, 2018. However, the tenancy came to an end in March 2018 pursuant to a 2 Month Notice served in January 2018 which predates the legislative amendments of May 17, 2018. The compensation provision of section 51(2) changed effective May 17, 2018 to provide tenants with compensation equivalent to 12 months of rent when it formerly read compensation was equivalent to 2 months of rent. Accordingly, the tenant(s) may not claim 12 months of rent as compensation and are limited to 2 months of rent. Furthermore, section 51(3), which provides the Director the ability to “excuse” a landlord from having to pay compensation under section 51(2) in “exceptional circumstances” did not exist prior to May 17, 2018. Prior to May 17, 2018 there was no excuse or exception to the compensation provision of section 51(2). Accordingly, I find the parties focused their arguments on sections of the Act that do not apply in this case.

Given the question as to whether the actual tenant made this application or provided authorization for another person to make this claim; and, the parties’ making submissions and arguments with respect to sections of the Act that do not apply to the circumstances of this case, I decline to consider this application further and it is dismissed with leave to reapply. The tenant(s) is/are at liberty to make another Application for Dispute Resolution with the statutory time limit provided under section 60 of the Act. The parties also remain at liberty to seek resolution by way of a settlement agreement prior to another dispute resolution process.

Conclusion

This application is dismissed with 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 26, 2019

Residential Tenancy Branch