



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On April 7, 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 to recover the filing fee pursuant to Section 72 of the *Act*.

D.M. attended the hearing as an advocate for the Tenant. The Landlord attended the hearing with M.C. attending as counsel for the Landlord. J.L. attended part way through the hearing as a witness for the Landlord. All parties, except the Landlord’s counsel, provided a solemn affirmation.

D.M. advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on or around April 9, 2019. She stated that she did not confirm that the Landlord could review the audio evidence that she submitted. The Landlord confirmed that this package was received and that she could listen to the audio evidence. 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 and evidence package. As a result, the Tenant’s evidence was accepted and considered when rendering this decision.

The Landlord advised that her evidence was served to the Tenant by registered mail on July 10, 2019 and D.M. acknowledged that the Tenant received this evidence on July 15, 2019. 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.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. There are no provisions in the *Act* that permit compensation for the items numbered

three through ten on the Tenant's Monetary Order Worksheet. As such, this hearing primarily addressed the claim for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), and the other claims were dismissed without leave to reapply.

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 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 started on October 1, 2017 and the tenancy ended when the Tenant vacated the premises on March 31, 2019. Rent was established at \$1,300.00 per month and was due on the first of each month. A security deposit of \$650.00 and a pet damage deposit of \$300.00 were paid.

All parties agreed that the Tenant was served with the Notice, dated February 27, 2019. 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 April 30, 2019.

D.M. advised that despite the Notice being dated February 27, 2019, the rental unit had not been sold yet, and had continued to be listed for sale into April 2019. She stated that she attended an open house at the rental unit on April 6, 2019 and spoke with the realtor, who advised that the rental unit had been for sale since November 2018, that there were several offers, but there was no successful sale completed. To support this

position, she submitted multiple documents, as documentary evidence, such as: the real estate listing, the Land Title Certificate demonstrating that the Landlord was still the owner of the rental unit, a print out of how long the rental unit has been listed for sale, and audio recordings of the realtor confirming that the rental unit had not yet been sold. As such, the Tenant's position is that he is owed compensation in the amount equivalent to twelve months' rent (**\$15,600.00**) pursuant to Section 51(2) of the *Act* as the Landlord did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

M.C. advised that the Tenant was not evicted, per se. She stated that it was the Landlord's belief that the Tenant was advised of an impending sale as a courtesy; however, there was no need for him to be privy to all of the details of any potential sale. She stated that there were three transactions that took place, and the first two were not successful, before the rental unit finally sold in April 2019. She stated that the purpose of the Notice was to advise the Tenant that the rental unit was for sale. When she was asked, as per the reason on the Notice, if all of the conditions for the sale of the rental unit had been satisfied and the purchaser asked the landlord, in writing to give this Notice because the purchaser or a close family member intended in good faith to occupy the rental unit, she directed me to a Contract of Purchase and Sale and a letter from a realtor as evidence to support that these aspects were satisfied prior to the Notice being served on February 27, 2019. However, as this was not her area of expertise, realtor J.L. was brought in as a witness.

J.L. advised that this first offer that M.C. spoke of was initiated on February 1, 2019 but the purchaser wanted the sale to complete within a month. He stated that this first offer, and a subsequent second offer, both were unsuccessfully completed. However, all of the conditions of a sale were finally satisfied on April 13, 2019. He submitted that there was a mutual agreement to end the tenancy signed between the parties where the Tenant agreed to move out prior to the effective date of the Notice. Neither the Landlord nor M.C. had any comments with respect to this mutual agreement.

D.M. drew my attention to the Landlord's own documentary evidence where she admitted that the first two sales did not close prior to February 27, 2019 and that the only sale transaction was complete on April 24, 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.

Section 49 of the Act states the following:

- (5) A landlord may end a tenancy in respect of a rental unit if*
- (a) the landlord enters into an agreement in good faith to sell the rental unit,*
 - (b) all the conditions on which the sale depends have been satisfied, and*
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

With respect to the Tenant's claim for twelve-months' compensation owed to them 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 February 27, 2019 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 also find it important to note that Policy Guideline # 50 states that:

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 (RTA only).

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances.

Finally, the policy guideline 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, it is clear from the Landlord's evidence and from the testimony of the Landlord, M.C., and realtor J.L. that there were no conditions of sale that were satisfied prior to the Landlord serving the Notice dated February 27, 2019. Furthermore, while M.C. relied on a realtor's letter claiming that the purchaser had asked the Landlord in writing to serve the Notice, I do not find this credible as a sale was never completed until April 2019. As well, I am satisfied that this finding is further corroborated by the fact that the "Purchaser's information" on the second page of the Notice has been left blank. While the Landlord claimed that her intention was to sell the rental unit and that the Notice was served in good faith, I do not doubt that this may have been the case as it appears as if the Landlord may have been mistakenly provided with direction to serve the Notice prematurely. Regardless, the good faith requirement ended once the Notice was accepted and the tenancy ended.

What I have to consider 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. However, as I am satisfied that the conditions of a sale were not satisfied until April 2019, and as it would have then not been possible for the purchaser to have served the Landlord a letter in writing prior to service of the Notice in February 2019, I am satisfied that the Landlord has failed to use the rental unit for the stated purpose as per the *Act* as it would have been impossible to do so.

Neither the Landlord nor M.C. advised that there were any extenuating circumstances that prevented her from using the rental unit for the stated purpose for at least six months after the effective date of the Notice. As the Landlord served the Notice prior to the conditions of the sale closing and without having a written request from the purchaser to serve the Notice, I find that this situation could have been anticipated or avoided. Consequently, I am not satisfied that there were any unforeseen or extenuating circumstances that prevented the Landlord from using the rental unit for the

stated purpose for at least six months after the effective date of the Notice. Ultimately, I am satisfied that the Tenant has substantiated the claim that he is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$15,600.00**.

As the Tenant was successful in his claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$15,700.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 26, 2019

Residential Tenancy Branch