



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDY CREEK HOLDING BERTRAM LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act*, for moving costs and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was accompanied by his advocates. The corporate landlord was represented by their agents LA and SL. LA is also a director of the corporation.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. I have also considered all the written evidence provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be Decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started in April 2005. The monthly rent at the end of tenancy was \$740.42 due on the first of each month.

The original landlord named on the tenancy agreement, sold the property to the current corporate landlord who took possession of the rental unit on February 01, 2017.

The parties agreed that on March 28, 2017, the new landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The reason for the notice was that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenant did not dispute the notice and chose to move out on the effective date of the notice, May 31, 2017. The tenant agreed that he received from the landlord, compensation in the amount of one month's rent.

The parties agreed that as of the date of this hearing, the rental unit remains unoccupied. The agents who represented the landlord at the hearing stated that they intended to move into the rental unit with their two children for the purpose of acting as caretakers. The tenant argued that the unit was a one bedroom which would be too small for a family of four.

The landlord stated that shortly after the tenant moved out, they started renovating the unit to suit their needs. Part of the renovation included breaking walls to add the adjacent unit to the rental unit, for additional space.

The agents for the landlord stated that the holding company that owned the rental unit had multiple directors and that due to internal issues and for financial reasons, the company decided to stop all renovations and therefore the agents for the landlord were unable to move in.

The tenant has applied for compensation pursuant to section 51 in the amount of 12 months' rent, moving costs plus \$100.00 for the filing fee for a total claim of \$9,313.13.

Analysis

Based on the documents filed into evidence and on the testimony of both parties, I find that the landlord served the tenant with a notice to end tenancy for landlord's use of property. The reason for the notice was that the landlord or a close family member intended in good faith to occupy the rental unit.

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement.

In addition to the amount payable under subsection (1), if

- (a) Steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) The rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord or purchaser as applicable under section 49, must pay the tenant an amount that is equivalent of double the monthly rent payable under the tenancy agreement.

It is important to note that in December 2018, s51(1)(b) was amended to increase the amount of compensation from double to 12 times the monthly rent. At the time this tenancy ended in July 2017, the compensation awarded to the tenant if applicable was double the monthly rent and will apply in in this case, if the tenant is successful in his application.

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

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.

An example of extenuating circumstances in the case could be if a landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.

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

In this case, instead of moving in and accomplishing the purpose for which the notice to end tenancy was served on the tenant, the landlord started renovations after the tenant moved out and then stopped work for various reasons including financial reasons.

Accordingly, I find that the landlord did not accomplish the stated purpose for ending the tenancy under section 49 and has not proven that he had extenuating circumstances that prevented him from doing so. Accordingly, pursuant to s. 51 of the *Residential Tenancy Act*, the landlord must pay the tenant an amount that is equivalent of double the monthly rent payable under the tenancy agreement. The monthly rent was \$740.42 and therefore the landlord must pay the tenant \$1,480.84 as compensation.

The tenant did not dispute the notice and chose to move out. The tenant has also received compensation in the form of a month of rent-free stay to assist him with the cost of moving. Accordingly, the tenant's claim for moving costs is dismissed. Since the tenant has proven the remainder of his application, I grant him the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$1,580.84. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents double the monthly rent plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,580.84**.

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: August 08, 2019

Residential Tenancy Branch