



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's two agents, the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his two agents, his daughter DH ("landlord's agent") and his wife EH, had permission to speak on his behalf at this hearing. The tenant confirmed that her agent had permission to speak on her behalf. This hearing lasted approximately 39 minutes.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's agent confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

Both parties verbally confirmed that they were ready to proceed with the hearing and that they did not require any adjournments or have any objections to proceeding.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the landlord's first name, which the landlord confirmed during the hearing. The tenant consented to this amendment during the hearing.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. A written tenancy agreement was signed by both parties. Monthly rent of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant and the landlord returned this deposit in full to the tenant. The rental unit is one whole side of a duplex, with an upper unit of three bedrooms and a basement unit of two bedrooms, which the tenant occupied. The other side of the duplex, which also has upper and basement units with the same amount of bedrooms as the other side, is rented out to other tenants.

The landlord's agent testified that this tenancy began on March 1, 2018 and ended on April 17, 2019. The tenant's agent claimed that it began on April 1, 2018 and ended on April 20, 2019.

Both parties agreed that the tenant vacated the rental unit pursuant to a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated February 4, 2019 ("4 Month Notice"). The notice has an effective move-out date of June 30, 2019. The tenant's agent confirmed that the tenant did not file an application at the RTB to dispute the 4 Month Notice.

The tenant seeks compensation under section 51(2) of the Act for 12 months' rent compensation of \$3,000.00 each month, totaling \$36,000.00, but she reduced this claim to the RTB's maximum monetary limit of \$35,000.00. The tenant's agent stated that she believed the tenant could claim for the amount of rent she is currently paying at her current unit, which is \$3,000.00, after moving out of the rental unit.

A copy of the 4 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice is:

- *Convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

The tenant's agent claimed that the tenant is seeking compensation from the landlord because he agreed to pay her a "substantial amount" of money if she vacated the rental unit. She confirmed that the landlord approached the tenant on February 4, 2019, saying he wanted to rent the basement out, where the tenant was occupying at the time. She maintained that the landlord came back on February 5, 2019, saying he wanted to move his grandson in to be the caretaker of the property. The tenant's agent claimed that the tenant was locked out of the rental unit by the landlord.

The tenant's agent said that the landlord has not used the rental unit for the stated purpose on the 4 Month Notice. She maintained that if the landlord intended to move a family member into the rental unit, it should have been a spouse or child as per a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), not a grandchild. She stated that the landlord probably re-rented the unit out to other tenants because he wanted more rent and he said in his evidence that he wanted to clean and bring the unit back up to "rentable" status. The landlord's agent said that she meant to say "habitable" rather than "rentable," as the unit was in a bad state when the tenant vacated, but it was not re-rented. The tenant questioned why the landlord would move his grandson in to be a caretaker of the unit, when it is a single family dwelling and the landlord did not inform the tenant that he could not handle his duties.

The landlord disputes the tenant's application for 12 months' rent compensation based on the 4 Month Notice. The landlord's agent claimed that the landlord converted the rental unit for use by a caretaker and followed the reason in the 4 Month Notice issued to the tenant. She maintained that no one else lives in or rents the unit, besides the landlord's grandson who moved in after the tenant vacated, still lives there, and will continue to live there in the future. She explained that the landlord's grandson is a caretaker for the property, which is a large property including both sides of the duplex, not a single family dwelling.

The landlord's agent confirmed that the landlord is elderly, as is his wife, and they both need assistance with the rental property. She said that the landlord's grandson is the

caretaker, he is an electrician by profession, and assists with many duties at the property. She maintained that the caretaker performs general maintenance, repair of items, pest control for rodents, electrical maintenance, garden maintenance, dealing with trespassers, and any other complaints or calls that are received for the property, that the landlord used to take care of himself.

Analysis

Section 49(6)(e) of the *Act* states that a landlord may end a tenancy in respect of a rental unit where the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 4 Month Notice issued under section 49(6) of the *Act*. Section 51(2) states:

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.

I make the following findings, on a balance of probabilities, based on the testimony and evidence of both parties. The tenant vacated the rental unit pursuant to the 4 Month Notice. I find that the tenant provided insufficient evidence to show that the landlord did not convert the rental unit for use by a caretaker. The tenant failed to provide proof that the rental unit was occupied by other tenants and the landlord's agent confirmed that it was not re-rented.

I accept the landlord's agent's testimony that the landlord converted the rental unit for use by a caretaker, who is the landlord's grandson, and he continues to remain there in this capacity. He performs caretaker duties at the rental property including general and

garden maintenance, dealing with pest control, repairing items, electrical work, dealing with trespassers, and any other inquiries.

It is up to the landlord to choose an appropriate caretaker, whether he is a family member or not. It is also up to the landlord to have a caretaker for this property, which is an older 1968 building, as per the landlord's agent's testimony, and is a larger property with multiple units.

I find that the landlord took steps, within a reasonable period after the tenant vacated the rental unit in April 2019 and the effective date of June 30, 2019 on the 4 Month Notice, to accomplish the purpose for ending the tenancy. Therefore, I find that the landlord used the rental unit for the reason indicated in the 4 Month Notice.

On a balance of probabilities and for the reasons stated above, I dismiss the tenant's application for 12 month's rent compensation of \$35,000.00, without leave to reapply.

As the tenant was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire application is dismissed 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: August 09, 2019

Residential Tenancy Branch