



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, FFT

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$9600
- b. An order to recover the cost of the filing fee.

The Landlord failed to appear at the scheduled start of the hearing which was 1:30 a.m. on August 16, 2019. The Tenant Applicant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the scheduled start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing and a sworn affidavit a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on May 11, 2019. A search of the Canada Post tracking service indicates that it was delivered on May 14, 2019.

There was a typing mistake of the tenant's name in the Application for Dispute Resolution. I ordered that the style of cause in the Application for Dispute Resolution be amended to correctly identify the Tenant. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on March 15, 2014. The rent was initially \$775 per month. The rent was subsequently increased to \$800 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$386.50 was paid at the start of the tenancy.

The landlord lives in the rental property. There are three suites in the back.

The tenant testified that in May 2018 he was served with a document that purported to end the tenancy for Arrears of Rent. The tenant did not owe any rent. He talked to the landlord's daughter and thought the landlord was no longer seeking to end the tenancy.

On May 31, 2019 the landlord served a 2 month Notice to End Tenancy. The grounds set out in the Notice are as follows:

- All of the conditions for 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

Although the Tenant was suspicious about the motive of the landlord he vacated the rental unit on August 4, 2018. He moved to another rental unit that had a rent of \$1130 per month.

The tenant has driven past the rental property on several occasions including the end of April 2019 and the landlord's car continues to be parked in the driveway. A Land Title Search of the rental property was conducted on April 23, 2019 and it showed there had been no change to the ownership of the property since 2012 and the landlord continued to be a registered owner. The solicitor for the tenant stated she did a second Land Title Search on the day of the hearing and it shows that there has been no change and the landlord continues to be the registered owner.

Section 51(2) and (3) of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

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.

Analysis:

After carefully considering all of the evidence presented at the hearing I determined that the Tenant is entitled to a monetary order under section 51(2) of the Act for the following reasons:

- The tenant was served a 2 month Notice to End Tenancy on May 31, 2018 that provided that the All of the conditions for 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
- I determined that the landlord did not sell the property as the property remains in the landlord's name 14 months after the Notice to End Tenancy was served.
- Steps have not been taken to accomplish the stated purpose and the rental unit was not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the Notice.
- The landlord failed to attend the hearing and failed to provide any evidence. I determined there is no evidence of extenuating circumstances the prevented the

landlord or purchaser from accomplishing the stated purpose as set out in section 51(3) of the Act.

Monetary Order and Cost of Filing fee

I determined the tenant is entitled to the order claimed. I ordered the landlord(s) to pay to the tenant the sum of \$9600 (\$800 a month x 12 months = \$9600) plus the sum of \$100 in respect of the filing fee paid for a total of \$9700.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: August 16, 2019

Residential Tenancy Branch