



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FFT

Introduction

On May 21, 2019, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement, and for the cost of the filing fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the Tenant’s entitled to compensation for money owed or damage or loss?

Background and Evidence

The parties testified that the tenancy began on June 15, 2016, as a one year fixed term tenancy which was renewed for a fixed term to continue until June 15, 2019. Rent in the amount of \$1,300.00 was due by the first day of each month. The Tenants paid a security deposit of \$600.00 and a pet damage deposit of \$300.00 to the Landlord.

The Tenants testified that they moved out of the rental unit on May 1, 2019, after they received a Two Month Notice To End Tenancy For Landlord’s Use Of Property dated March 2, 2019.

Compensation for Breach of Section 51 of the Act

The Tenants are seeking compensation for an amount equivalent to 12 times the monthly rent payable under the tenancy agreement.

The Tenants testified that the Landlord issued a Two Month Notice To End Tenancy for Landlord's Use Of Property dated March 2, 2019 ("the Two Month Notice") in bad faith because the Landlord did not use the rental unit for the stated purpose for at least 6 months after the effective date of the Notice.

The Tenants provided a copy of the Two Month Notice. The reason for ending the tenancy within the Two Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member.

The Two Month Notice provides that the Tenants must move out of the rental unit by June 16, 2019, which is the end date of the fixed term tenancy agreement.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The Two Month Notice provides information that a Tenant on a month to month tenancy may move out sooner than the date set out in the Notice as long as the Tenant gives the Landlord at least 10 Days written Notice.

The Tenants testified that the Landlord contacted them on April 1, 2019, and asked them to stay. The Tenants testified that they had already submitted rental applications elsewhere and they were waiting to hear if they were accepted. The Tenants testified that the Landlord was already aware on April 1, 2019, that they had been looking for a rental unit.

The Tenants also testified that they had concerns about the furnace in the rental unit and the Landlord's responsibility to maintain the furnace. The Tenants' testified that the Landlord would not maintain the furnace because she stated that she could not afford to

do so. The Tenants testified that the Landlord has taken visits to China on many occasions for a month at a time.

The Tenants accepted a tenancy elsewhere, and on April 14, 2019 they provided the Landlord with written notice to end tenancy effective May 1, 2019. The Tenants provided a copy of the written notice to end the tenancy that they provided to the Landlord.

The Tenants testified that the Landlord immediately advertised the rental unit on a local website for a higher amount of rent. The Tenants provided a copy of a rental advertisement for the unit that indicates the rental unit was available May 2, 2019, at a monthly rent of \$1,650.00.

The Tenants provided a copy of a notice they received from the Landlord indicating that the Landlord is showing the rental unit to prospective Tenants on April 21, 2019.

In reply, the Landlord submitted that her relationship with her husband was worsening so she thought about separating. She testified that she decided to move into her own home, so she issued the Two Month Notice to Tenants that reside in both rental units on her rental property.

The Landlord testified that her sister then invited her to live with her in China, so on April 1, 2019, she called both Tenants and informed them that they did not need to move out and may stay living in the unit. She testified that she changed her mind to let the Tenants continue to rent. She testified that the Tenants living in the upper unit decided to stay; however, the Tenants living in the lower unit refused to stay.

When the Landlord was asked to provide the date that she moved to China, she stated that she only intended to move to China if she separated from her husband. She testified that she is still living at the same address. She testified that she is currently in China but is coming back to Canada.

The Landlord testified that she did not have money to fix the furnace.

The Landlord testified that she rented the unit to a new Tenant beginning on May 3, 2019.

The Tenants submitted that the Landlord had no concern with the Tenants ending the fixed term tenancy early as she immediately began to give them notices of viewings for prospective Tenants.

The Tenants submitted that the Landlords decision to end two separate tenancies to solve her financial issues makes no sense.

The Landlord was asked if there are any extenuating circumstances for me to consider excusing her from paying compensation and interpreter testified that the Landlord replied "no".

Analysis

Section 50 of the Act provides that if a Landlord gives a Tenant notice to end a periodic tenancy under section 49 [landlord's use of property] the Tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. A notice under this section does not affect a Tenants right to compensation under section 51 [tenant's compensation: section 49 notice].

Section 51 (2) of the Act provides:

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. ***[my emphasis]***

(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.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a Landlord to pay compensation to a Tenant when a Landlord ends a tenancy for Landlords use of property. The Guideline provides that a Landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

With respect to extenuating circumstances, Guideline #50 provides the following:

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.

The Guideline provides 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 Guideline provides that 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.

Residential Tenancy Policy Guideline #11 Amendment and Withdrawal of Notices provides:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date.

Based on all of the above, the evidence and testimony of the parties, and on a balance of probabilities, I find as follows:

I find that the Landlord failed to use the rental property for the reason stated within the Two Month Notice for a six month duration. I find that the Landlord changed her mind about moving into the rental unit; however, the Landlord cannot unilaterally withdraw the Two Month Notice. The Tenants accepted the Two Month Notice and moved out.

I find it odd that the Landlord chose to issue a Two Month Notice To End Tenancy For Landlord's Use Of Property to two separate Tenants under two separate tenancy agreements. It is unclear how the Landlord was going to occupy two separate rental units, and it is unclear why she would end the both tenancies and lose the rental income when she indicated she was having financial difficulties.

I find that the Landlord still lives at the address provided to the Tenants as the Landlord's address.

The Tenant's moved out of the rental unit on May 1, 2019, and the Landlord re-rented the unit to new Tenant's on May 3, 2019. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenants the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered section 51(3) of the Act and the Guideline regarding compensation and extenuating circumstances. I find that there is insufficient evidence from the Landlord to support that there are extenuating circumstances present making it unjust for the Landlord to have to pay compensation. The Landlord changed her mind and rented the unit out to new Tenants. I find that the circumstances before me are not extenuating circumstances.

I find that the Landlord owes the Tenants \$15,600.00 which is the equivalent of 12 times the monthly rent of \$1,300.00 payable under the tenancy agreement.

I find that the Tenants incorrectly gave the Landlord two weeks written notice to end the tenancy early. The Act only permits Tenants to give early written notice when a tenancy is on a month to month basis. I find that the early notice given by the Tenants does not invalidate the Landlord's Two Month Notice. The Landlord re-rented the unit to a new Tenant just two days after the Tenants moved out.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$15,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord issued the Tenants a Two Month Notice and then changed her mind and attempted to withdraw the Notice. The Landlord then rented the unit to a new Tenant.

The Landlord failed to use the rental property for the reason stated within the Two Month Notice for a six month period.

The Landlord must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$15,700.00 for the breach of section 51 of the Act, and the cost of the filing fee.

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: September 4, 2019

Residential Tenancy Branch