



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on September 12, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

The Landlords and the Tenant both attended the hearing. The Landlords confirmed receipt of the Tenant's application and Notice of Hearing in June of 2019. The Tenant confirmed receipt of the Landlord's evidence. The Tenant stated that she sent the Landlords her evidence package by registered mail (tracking info provided into evidence) on August 16, 2019. The Landlord stated that they got the Tenant's evidence package, separately from the Notice of Hearing as the Tenant has stated, but the USB stick included with the documentary evidence was empty and not readable. I find the Tenant has sufficiently served her application and paper based documentary evidence, which was included in her evidence package. However, I turn to the following Rule of Procedure:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

I note the Tenant included a couple of photos and videos on the USB stick, she claims to have sent to the Landlords. Although the Landlord's confirmed they got the USB stick, they were unable to read any of the files. There is no evidence showing that the Tenant attempted to confirm that the Landlords were able to read the evidence contained on the drive, or that they were able to gain access to it. As such, I find the Tenant failed to serve her digital evidence in accordance with the Rules of Procedure. The Tenant should have taken steps to ensure and confirm her digital evidence was accessible. I find the Tenant's digital evidence is not admissible, as it was not properly served in accordance with the Rules of Procedure (3.10.5).

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

Both parties agreed that monthly rent was \$650.00 per month. The Tenant stated she received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on December 7, 2018. The Tenant provided a copy of the Notice into evidence, and it indicates the Landlords were seeking to end the tenancy so that they, or a close family member, could move in. One of the Landlord's, D.S, stated that it was his mother who was planning on moving in, and this is why that ground was selected on the form.

The Tenant stated that neither the Landlord, nor any family member have moved in (over 7 months have now passed), and the unit remains empty. The Landlord confirmed in the hearing that the rental unit is still empty. However, the Landlord provided some explanation for this as follows:

One of the Landlords, D.S., has a mother who is caring for her mother (D.S.'s Grandmother) in Regina. Last September 2018, D.S. stated that his mother's husband (his Stepfather) died and his mother discussed wanting to move to be with them, in BC. D.S. also stated that his grandmother is not in the best of health (who also lives in Regina). D.S. stated that they issued the Notice so that his mother could come and live with them in this rental unit, which is in a carriage house on the property where they are living.

D.S. stated that his grandmother is in her 90's now and has failing health. Both Landlords stated they had expected that D.S.'s grandmother would have passed away last fall, due to some health concerns and the fact she is over 90 years old. As such, D.S. stated that his mother was expecting to be able to move to BC to live in the rental unit shortly after the Notice took effect. However, D.S.'s grandmother (his mother's mother), has recovered and become more healthy (although still weak). D.S. stated that once his grandmother passes away, his mother plans on moving from Regina, where she is caretaking, to BC to stay in the rental unit. D.S. stated that his grandmother has up and down health but she has surprised them all, by not passing away. D.S. stated that they issued the Notice under the assumption that his grandmother was going to die

shortly, which would subsequently free his mother from caretaking duties, and would in turn allow her to move to BC into this rental unit. The Landlords both stated that the grandmother has still not passed, and their mother is still living in Regina as a result.

The Tenant is also seeking compensation for an Ikea bed, as per her application. However, she did not speak to this point in the hearing or explain why she is entitled to this item.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant is seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$650.00) because the Landlord failed to use the rental unit in the manner described in the Notice (so that one of the Landlords' mother could move in).

The Tenant is also looking to recover the cost to buy a new bed as a result of the move. However, she did not speak to this point in the hearing, or explain why she should be entitled to this amount. As such, I dismiss the Tenant's request for compensation for the bed.

I turn to the following portion of the Act:

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.*

I note the Landlord, D.S., presented some reasons as to why his mother has not moved into the rental unit yet (which was the basis for the Notice). However, the consistent evidence from both parties is that neither the Landlord, nor a close family member as defined on the Notice, has moved in. I note the Tenant moved out of the rental unit at the end of January 2019. It has been over 7 months since the Tenant moved out, and the unit is still not occupied by the Landlord or close family. I turn to the following portion of Policy Guideline #50:

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

After considering the totality of the evidence and testimony on this matter, I find the amount of time that has passed is not a reasonable period of time. I note a "reasonable period" is generally a short amount of time, within the context of ending a tenancy so that the Landlords can use the space for themselves. In this case, the Landlords are waiting for a grandmother to pass away, which still has not happened. I note the Landlord thought this was going to happen in the fall of 2018. However, I note that it has been over 9 months since that time, and there is no way to know when this will occur. I do not find the Landlord's have met the test for a "reasonable period" of time in order to accomplish what they said they were going to do on the Notice. I find the Landlords are

not entitled to indefinitely leave the unit vacant, despite evicting the Tenant saying their mother was going to move in.

Given my findings thus far, I find the Landlord has breached section 51(2) of the Act. As such, I will now consider whether or not the Landlord has provided sufficient evidence to show that they had extenuating circumstances which prevented them from being able to accomplish the stated purpose on the Notice.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

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.

I have considered the totality of the evidence and testimony, and I find there is insufficient evidence to show that there were “extenuating circumstances” or that there were exceptional circumstances such that the Landlord ought to be excused from paying the compensation due. It appears the Landlords issued the Notice prematurely; the Landlord, D.S., expected that his mother would be moving to live in the rental unit by the time the Notice took effect, as the only thing that was preventing her from making the move was the fact that she was caring for *her* mother in Regina. The Landlord should not have ended the tenancy in this manner until there were more concrete and reliable timelines to work with. If D.S.'s mother could not move into the rental unit until her mother passed away because she was in another city caretaking, then the Landlord should have waited to issue the Notice until this precipitating event occurred. I also note that the Landlords stated that this is not the first time D.S.'s grandmother has had ups and downs with her health. I do not find it reasonable to allow the Landlord to issue the Notice so that a family member can move in, then allow them to wait an indefinite period of time before this actually occurs.

As the Tenant was successful with her application, I also grant her the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenant a monetary order in the amount of \$7,900.00 because the Landlords breached section 51 of the Act.

Conclusion

I grant the Tenant a monetary order in the amount of \$7,900.00. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: September 13, 2019

Residential Tenancy Branch