



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for a monetary order for money owed or compensation under the Act and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence in advance of the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord and to recovery of the filing fee paid for this application?

Background and Evidence

There was a dispute as to when this tenancy began. The tenant submitted it began in August 2017, and the landlord said she did not know when the tenancy began. The undisputed evidence is that monthly rent was \$600.00. There is no issue of the tenant's security deposit, as it was returned to the tenant.

The tenant submitted without dispute that she lived in the rental unit, which was the basement suite of a home owned by her mother and the tenant's mother lived upstairs, as the owner of the residential property.

The tenant submitted that her mother sold the home and the purchaser, the landlord here, requested the seller, the tenant's mother, issue the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). As a result, the tenant was issued a Notice by her mother, a copy of which was submitted by the tenant. The Notice was dated September 5, 2018, signed by the tenant's mother, served on the tenant on September 15, 2018, and listed an effective move-out date of November 30, 2018.

As a reason for ending the tenancy, the Notice listed that all the conditions for the 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.

The tenant submitted further that she chose to accept that the tenancy was ending and vacated the rental unit on or about December 7, 2018.

The tenant submitted that she was informed by a former neighbour that another tenant appeared to have moved into the rental unit on December 25th or 26th 2018 and is still residing there. The tenant submitted a copy of an email from that neighbour.

The tenant denied the landlord's assertion that the carpets needed professional cleaning, as the flooring was hardwood. The tenant submitted further that her mother had renovated the rental unit prior to the start of her tenancy and did not need any work.

The tenant submitted that she is entitled to compensation equivalent to 12 months' rent, as the landlord has not used the rental unit for the stated purpose listed on the Notice, in the amount of \$7,200.00.

Landlord's response-

The landlord submitted that her original intent in asking the former owner to issue the Notice was that her mother and father were to move into the rental unit, to be close to her and her children. The landlord submitted that her parents were also moving into the rental unit to help look after her two children when needed.

The landlord submitted that her mother moved into the rental unit and stayed from December 11-13, 2018, but could not stay as she had an asthma attack due to the pet dander from the tenant's cats. The landlord submitted her father was to install new flooring, but in mid-December, her father fell extremely ill while he was in another country. The family were informed that the landlord's father would need 6-8 weeks of chemotherapy. The landlord submitted her father was transferred to 3-4 different hospitals during his illness.

Due to this situation, the landlord believed her parents would be unable to move into the rental unit immediately while her father was receiving treatment in another city.

The landlord submitted that around the same time, a family friend was also being evicted as the result of a Two Month Notice to End Tenancy for Landlord's Use of Property. She allowed the family friend to move into the rental unit on a temporary basis to give the friend time to secure another rental unit and as the family would be dealing with her father's medical treatments, according to the landlord. The landlord submitted a copy of the friend's Notice, showing a move-out date of December 31, 2018.

The landlord submitted that her father died on December 29th, 2018, due to his sudden serious illness. The landlord submitted a copy of her father's death certificate.

The landlord submitted that the friend who moved into the rental unit ended up staying longer for housesitting services, but was never an official tenant until July 1 2019.

The landlord submitted that her father's death created extenuating circumstances as her mother no longer wanted to live in the basement unit alone without her husband.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence shows that the tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. In this case, the landlord listed that all the conditions for the 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.

Section 51(2) provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement. (emphasis added).

Under section 51(3) of the Act, provides that a landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

Under Residential Tenancy Policy Guideline 50, section E, if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose so that it would be unreasonable and unjust for the landlord to pay the compensation, the arbitrator may excuse the landlord from paying the compensation. An example given in this section is in the case where a landlord ends a tenancy so that a parent can occupy the rental unit and the parent dies before moving in.

In this case, I accept that landlord has failed to use the rental unit for the stated purpose as a close family member never moved in. I, however, find that extenuating circumstances prevented the landlord from accomplishing the stated purpose of her parents moving in, due to the death of her father within the same month as the tenancy ended. I find it reasonable that the landlord's mother would not want to occupy the rental unit as a single person as the intent was for the landlord's mother and father both to occupy the unit.

For the above reasons, I therefore excuse the landlord from paying the tenant the monetary compensation as I find it would be unreasonable and unjust for the landlord to do so in light of her father's death.

As a result, I dismiss the tenant's application for monetary compensation and for recovery of her filing fee.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent and recovery of the filing fee is dismissed, due to extenuating circumstances as described herein.

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 17, 2019

Residential Tenancy Branch