Dispute Resolution Services

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 ("Application") under the *Residential Tenancy Act* ("Act") for compensation for monetary loss or other money owed in the amount $10,884.00 or twelve times the monthly rent. The Tenant said the Landlord did not use the rental unit for the stated purpose on the Two Month Notice to End Tenancy dated December 19, 2018 ("Two Month Notice"), and she applied to recover the $100.00 cost of her Application filing fee.

The Tenant, the Landlord, and an agent for the Landlord, R.F. (the "Agent"), appeared at the first teleconference hearing and gave affirmed testimony. Only the Tenant and the Landlord attended the reconvened hearing.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Following the hearings, the Agent made a Request for Correction pursuant to section 78 of the Act. The Agent stated that the company he represents, a property management company, represents the original owner/landlord, and should not be named as a "landlord" in this matter. I agree that the Agent's company was not a Party to the events following the sale of the residential property, and that it is inappropriate for them to be named as a Party in this matter or in the associated Order. As such, I have deleted this company name from the Decision and Order, as of October 24, 2019.

The first hearing was adjourned at the onset at the Landlord's request, as he said he had recently undergone surgery, was on strong pain medication, and would not be able to focus properly for the hearing. I agreed to adjourn the hearing, as the Tenant and the Agent did not indicate that they would be prejudiced by the adjournment.

I sent the Parties an Interim Decision adjourning the matter and providing information about the next hearing date and contact information.
The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

The Tenant said she served the Landlord and the Agent with the Application, Notice of Hearing and documentary evidence via Canada Post registered mail. The Tenant said that she recorded some of her evidence on a flash drive that was contained in the package. The Landlord said he did not get the evidence on the flash drive, but that he just pulled documents out of the registered mail package and did not look farther into the envelope. I find it more likely than not that the Tenant's registered mail package contained the flash drive with her evidence and that the Landlord failed to notice it.

The Landlord uploaded evidence to the RTB service portal, but he said he did not serve this evidence on the Tenant. As a result, and in keeping with rules of administrative fairness and natural justice and pursuant to Rule 3.14, I will not consider the Landlord's evidence, since he did not give the Tenant an opportunity to review it in preparation for the hearing. I advised the Parties of this in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2013, with a monthly rent of $850.00, due on the first day of each month. The Parties agreed that the rent had risen to $907.00 by the end of the tenancy. The Parties agreed that the Tenant paid a security deposit of $425.00, no pet damage deposit, but a $100.00 deposit for a key fob

she was given for the residential property. The Parties agreed that the Landlord paid the Tenant back these deposit amounts.

The Tenant said that she is seeking compensation in the form of 12 times the monthly rent pursuant to section 51 of the Act, for a total of $10,884.00. She said the Landlord did not fulfill the purpose stated in the Two Month Notice. The Agent served the Tenant with the Two Month Notice on the Landlord's behalf, and the Agent checked the following ground on the Two Month Notice:

> All of 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 Landlord said that he does not contest that neither he nor a close family member moved into the rental unit. The Landlord said that he intended in good faith to move into the rental unit when the Tenant was served with the Two Month Notice. However, he said that subsequent to this service, his health deteriorated with two serious conditions. The Landlord indicated that it was no longer expedient to move into the residential property. The Landlord said that he had been looking forward to moving to the new town and the residential property; however, he said that one of his doctors was across the other side of the city and it would be much farther to travel from the residential property to the doctor than to stay in his current property. As a result, he changed his mind and decided to rent out the property again two weeks after the Tenant vacated the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

The Landlord ended the tenancy on the grounds that he or a close family member would be occupying the rental unit. However, the undisputed evidence before me is that the Landlord did not move into the rental unit. Rather, he advertised it for rent two weeks after the Tenant moved out. The Landlord acknowledged that another tenant now lives in the rental unit and is paying $443.00 more in rent than did the Tenant. As such, I find that the Landlord breached section 49(3) of the Act.

Pursuant to section 51(2) of the Act, the Tenant is entitled to compensation in the form of the equivalent to 12 times the monthly rent payable under the tenancy agreement,

because, pursuant to section 51(2)(b):

> (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 do not find that the Landlord took steps to move into the rental unit, which was the stated purpose to end the tenancy. Furthermore, the rental unit was not used for the stated purpose for at least six months. In fact, the evidence was that the Landlord did not use the rental unit for the stated purpose at all. He raised the rent by nearly 50 percent with another tenant. As explained in Policy Guideline #50 ("PG #50"):

> Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.
>
> This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.
>
> [emphasis added]

Section 51(3) states that the Director may excuse a 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 from accomplishing the stated purpose within a reasonable period after the effective vacancy date of the Two Month Notice.

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

> **E. EXTENUATING CIRCUMSTANCES**
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> 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.

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

[emphasis added]

Based on the testimony before me, I find on a balance of probabilities that the Landlord has not established that he had sufficient extenuating circumstances for not moving into the rental unit. The Landlord agrees that he did not pursue the purpose of issuing the Two Month Notice; therefore, the Tenant's burden of proof is met. The burden then switches to the Landlord to prove that he had a good faith reason for not moving in.

In the first hearing the Landlord said he was diagnosed with two life altering health issues in January 2019. He said he did not want to move farther away from his doctor, whose office was closer to the Landlord's original residence and farther from the rental unit. However, the Landlord did not indicate that he had to see this doctor repeatedly for a long period of time. The Landlord did not say that his health prevented him from moving or that there was something about the rental unit that would hinder his recovery. I find the Landlord's reason to be insufficient to negate moving into the rental unit.

The Landlord said he was diagnosed with the conditions in January 2019, after issuing the Two Month Notice. As such, he could have cancelled the eviction notice and continued the tenancy. Rather, two weeks after the tenancy ended, he advertised for a new tenant at nearly 50 percent higher rent amount.

I find on a balance of probabilities that the Landlord has not provided sufficient evidence to establish that he had extenuating circumstances that prevented him from moving in to the rental unit within a reasonable amount of time after the Two Month Notice took effect. Accordingly, I award the Tenant a monetary order of $10,884.00, pursuant to section 51(2) of the Act. Given her success in this Application, I also award the Tenant with recovery of the $100.00 filing fee for a total award of **$10,984.00.**

Conclusion

The Landlord did not use the rental unit for the stated purpose in the Two Month Notice, and he did not provide sufficient evidence of extenuating circumstances to warrant not following the purpose of the Two Month Notice. Accordingly, the Tenant's claim for compensation in the amount of 12 times the rent is successful in the amount of $10,884.00, pursuant to section 51 of the Act. The Tenant is awarded recovery of the $100.00 filing fee for this Application from the Landlord.

I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **$10,984.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 30, 2019

Correction Date: October 24, 2019

Residential Tenancy Branch