



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for monetary compensation, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Tenants was present for the hearing, as was the Landlord and legal counsel (the “Landlord”). The Landlord also had a witness who joined during the hearing to present witness testimony and answer questions from both parties.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence, with the exception of a video clip submitted by the Tenant. The Tenant confirmed that the video clip was not served to the Landlord as he had thought she had access to it through the online Residential Tenancy Branch site. However, as the video clip was not served to the Landlord in accordance with the *Residential Tenancy Branch Rules of Procedure*, the video clip is not accepted and will not be considered in this decision.

The Tenant confirmed receipt of the Landlord’s evidence package. Neither party brought up any further issues regarding service during the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions, call witnesses, and question the other party.

Issues to be Decided

Are the Tenants entitled to monetary compensation?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by copies of the tenancy agreements that were submitted into evidence. The tenancy began on November 1, 2017 for a fixed term of one year. A second fixed term tenancy was entered into beginning November 1, 2018 and ending March 31, 2019. Monthly rent was \$2,500.00 and a security deposit of \$1,250.00 was paid at the start of the tenancy and has since been returned. The tenancy ended on March 31, 2019.

The Tenants have applied for compensation in the amount of \$30,096.43 which is \$30,000.00 as 12 months compensation pursuant to Section 51 of the *Act*, and \$96.43 for moving costs.

The Tenant provided testimony that they received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") in January 2019 to end the tenancy effective March 31, 2019. A copy of the Two Month Notice was submitted in to the Landlord's evidence and states the following as the reason for ending the tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse)

The Tenant stated that it was their understanding that the Landlord intended to move into the rental unit. The Tenant testified that after moving out, they saw the rental unit advertised for sale approximately two weeks later, in mid-April 2019. The Tenant stated that the rental unit was sold approximately three months later. The Tenant submitted into evidence a photo of the home with a 'sold' sign which was noted as taken on July 5, 2019.

The Tenant stated that the Landlord had previously had the home listed for sale during the tenancy and that it had not sold during that time. The Tenant stated that they provided access to the home during this previous attempt to sell with the exception of

one time when a realtor arrived with no previous notice. The Tenant stated that in that case they allowed the realtor access to the exterior of the rental unit and property.

The Tenant stated his position that since the rental unit was listed for sale two weeks after the Landlord moved in, that she had no intention of living there for a long period of time or permanently. He also stated that although a tenancy agreement had been signed for a new fixed term set to end on March 31, 2019, that the tenancy would have continued on a month to month basis following this.

The Landlord provided testimony regarding the events that led to the sale of the rental unit and also provided a statutory declaration outlining their submissions. They stated that the property was purchased by the Landlord in 2017. They noted that although the initial intention was to purchase the property with family members, this did not work out, so the Landlord purchased the property through her own mortgage. However, the Landlord stated that after moving in with the family members, conflict arose and the family members moved out. The Landlord testified as to the difficulty during this period and the emotional distress in no longer having a relationship with these family members.

The Landlord stated that due to this she rented the home to the Tenants and although she wanted to rent the home only and reside in the cottage, the Tenants asked to rent both units through the tenancy agreement. The Landlord testified that she resided outside of Canada during the winters and would live in a 5th wheel on the residential property or with friends during the summer months.

The Landlord stated that she decided to sell the rental unit with the tenancy in place and listed the home for sale in April 2018. She stated that the home was listed for sale until September 2018 when it was taken off the market due to little interest in the property. The Landlord described the rental unit as dark and unique and therefore difficult to sell.

The Landlord stated that she entered into a new tenancy agreement with the Tenants for the period of November 1, 2018 to March 31, 2019 and stated her intention to continue the tenancy on a month to month basis following the end of the fixed term. However, she submitted that she soon realized that she needed to live in the rental unit when she returned from being away for the winter.

The Landlord testified that she served the Tenants with the Two Month Notice on January 14, 2019 and moved into the rental unit on April 1, 2019. The Landlord stated that her intention was to clean up the residential property while living there and

eventually list the home for sale. However, she stated that she found it very isolating and depressing to live there and that she missed her family terribly. The Landlord also noted that she developed an extremely bad cough within the first few days of moving in. She stated that she received a prescription, but this only helped a bit and her depression was getting worse.

The Landlord listed the home for sale on April 17, 2019 and said that she was advised that the home may not sell for at least a year, so she was preparing to stay in the home for the winter. The Landlord stated that she received an offer in June 2019 and although lower than she hoped for, accepted it with a closing date of July 31, 2019.

The Landlord's witness, C.W. is the realtor who listed the rental unit for sale in 2018 and again in 2019. The witness testified as to the home being dark and having an odd/awkward layout making it difficult to sell, along with a slowing real estate market. The witness stated that in April 2019 when she met with the Landlord it was clear that the Landlord was stressed about the property. She also noted that she had advised the Landlord that it could take a while to sell. When the Landlord received a low offer, the witness stated that she encouraged the Landlord to accept it due to her health regarding her cough and state of mind living in the home.

A statutory declaration from the witness was also submitted into evidence by the Landlord. Included as an exhibit to the declaration are four photos of the rental unit and residential property.

The Landlord stated their position that there were extenuating circumstances present that did not allow the Landlord to continue residing in the home as planned, such as the development of a cough and her mental wellbeing. They also stated their position that the Landlord resided in the home for four full months, just shy of the six-month requirement. The Landlord stated that due to extreme emotional and physical distress the Landlord was unable to reside in the home longer than four months.

The Tenants have also claimed \$96.43 for the cost of renting a truck to move and submitted the invoice for the truck rental in this amount.

Analysis

The Tenants applied for 12 months of compensation pursuant to Section 51 of the *Act*. Section 51(2) states the following:

(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.

The parties were in agreement that the Tenants were served with a Two Month Notice pursuant to Section 49 of the *Act* in January 2019. The Tenants' claim was that as the Landlord listed the home for sale in April 2019 after they moved out on March 31, 2019 that the Landlord did not use the rental unit for the stated purpose of the Two Month Notice for a period of 6 months.

However, as the Landlord testified as to the presence of extenuating circumstances, I refer to Section 51(3) of the *Act* which states the following:

(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 also refer to *Residential Tenancy Policy Guideline 50* which provides further clarification on Section 51 of the *Act*. Policy Guideline 50 also defines 'extenuating circumstances' as circumstances where it would be unreasonable and unjust for a

landlord to pay compensation to a tenant. As an example, this may include ending a tenancy for a close family member to move in, but that close family member passes away. A landlord changing their mind would not be considered an extenuating circumstance. In general, an extenuating circumstance would be one which is unexpected and out of the control of a landlord.

The Landlord provided testimony and evidence regarding depression from residing in the rental unit as well as the development of a cough. The Landlord also stated that she resided in the home for a period of four months.

Regarding the claim of extenuating circumstances, I do not find sufficient evidence before me that the Landlord experienced extenuating circumstances that prevented her from following through on the stated purpose of the Two Month Notice. The Landlord moved into the rental unit on April 1, 2019 and listed the home for sale on April 17, 2019 and I am not satisfied that extenuating circumstances arose within two weeks of moving into the rental unit.

While the Landlord provided testimony on how depressing it was to be in the home, she also submitted written submissions regarding how difficult it was to live there previously when the original plan was to reside in the home with her family. It seems that the original difficulty with residing in the rental unit on her own led to her decision to rent out the unit, so I do not find that this was something unexpected that occurred after the Landlord moved in again on April 1, 2019.

I also do not find sufficient evidence before me to connect the cause of the Landlord's cough to residing in the rental unit. As such, I am not satisfied that the Landlord was not able to accomplish the stated purpose of the Two Month Notice and had to list the home for sale within 17 days due to medical concerns.

Regarding the length of time the Landlord resided in the home prior to completion of the sale, I do not find that she met the 6-month requirement as outlined in Section 51 of the *Act*. Regardless of residing in the home for 4 months, as the Landlord ended the tenancy through a Two Month Notice due to a plan to reside in the rental unit herself and then listed the home for sale 17 days later, I find that the Landlord ended the tenancy without cause. I also note that despite the Landlord's submissions that four months is just short of the six-month requirement, it is still not six months.

Despite the Landlord not finalizing the sale of the home until the end of July 2019, as it was listed for sale in April 2019, there was the possibility that the home could have sold

sooner. Thus, I find that four months was the period of occupancy only due to the time it took to sell the home and for the new owners to take possession. As the Landlord listed the home for sale shortly after moving in, I find that her intentions were not to reside in the home for six months. Although both the Landlord and witness testified as to the potential that the home would take a long time to sell, this is not predictable, and a home could sell right away after being listed.

As such, I do not find sufficient evidence before me to establish that the Landlord experience extenuating circumstances such that she was unable to occupy the rental unit for a period of at least six months. Instead, I find that the Landlord ended the tenancy and within 17 days changed her mind regarding her decision to reside in the rental unit. As stated, a change of mind is not an extenuating circumstance. Accordingly, I do not find that the Landlord should be excused from paying compensation under Section 51(2).

Therefore, I award the Tenants 12 months compensation pursuant to Section 51(2) of the *Act*. As the parties agreed that monthly rent was \$2,500.00, I find that the Tenants are entitled to compensation in the amount of \$30,000.00.

Regarding the Tenants' claim for the cost of renting the moving truck, I decline to award any compensation. As stated in Section 51(1) of the *Act*, a tenant who receives a Two Month Notice is entitled to one month of compensation and I find that this is in part to compensate for the inconvenience of moving. I do not find sufficient evidence from the Tenants to establish that the cost of the moving truck should be compensated as well. This claim is dismissed, without leave to reapply.

As the Tenants were mostly successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. Therefore, the Tenants are granted a Monetary Order in the amount of \$30,100.00.

Conclusion

Pursuant to Sections 51, 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$30,100.00** as outlined above. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this 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: October 31, 2019

Residential Tenancy Branch