



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentary evidence for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of twelve months' rent as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave the following testimony. The tenancy began on February 1, 2017. The monthly rent was \$1400.00. On October 30, 2018 the landlord served the tenant with a Two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by December 31, 2018 for the following reason:

- *All of the conditions for 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 tenants moved out on December 1, 2018 but later discovered that the landlord was advertising the unit for rent on January 19, 2019. The tenant testified that the advertisement had the landlords name and phone number. The tenant testified that she did a land title search and as of April 8, 2019 the landlord still owned the property. The tenant submitted a copy for this hearing. The tenant is seeking 12 months rent as compensation.

The landlord gave the following testimony. The landlord did not dispute any of the facts put forward by the tenant. The landlord testified that the notice was given on October 30, 2018 after all of the subjects of the sale were met and removed on October 26, 2019. The landlord testified that the buyer paid the first deposit but was unable to secure the funds to pay the second deposit and balance of the price to purchase the home. The landlord testified that the notice was given at the request of the buyers and that as a result of the buyer defaulting on the deal, it negatively impacted the landlord financially as well. The landlord testified that these were circumstances out of his control and that he was forced to remortgage his home and rent it out as a result of the buyer defaulting on the deal. The landlord does not feel he should be penalized for someone else's actions.

Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
- the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve months rent payable under the tenancy agreement.

Section 51(3) of the Act addresses the issue before me as follows:

Tenant's compensation: section 49 notice

51 (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.

The landlord's position is in fact supported by the tenant's documentation to show that the property wasn't sold and that the purchaser did not execute the deal as agreed upon. The tenants exercised their right to leave early on December 1, 2018. The landlord accepted the first deposit payment on December 31, 2018 and was not aware that the seller would not be closing on the deal until the second week of January 2019. I find that the circumstances described by and agreed by both parties clearly meets the definition of extenuating circumstances and as a result, no further compensation is required. The tenants have not been successful in their application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 29, 2019

Residential Tenancy Branch