



Dispute Resolution Services

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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 October 8, 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 51; 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 evidence. The Landlords confirmed that they did not submit any documentary evidence.

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 section 51 of the *Act*?

Background and Evidence

The Tenant stated that monthly rent was \$800.00 per month. The Tenant stated she received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on March 27, 2019. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- 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 Landlords at the hearing confirmed that they were in fact the ones who purchased the house, which contained this rental unit, and they asked the seller to give this Notice so that their son could move into the basement suite once they took possession in May of 2019. The Landlords stated that the Tenant had already moved out by the time they took possession on May 18, 2019.

The Landlords explained that they had every intention of fulfilling the grounds they listed on the Notice, but due to unforeseen circumstances, it didn't pan out. The Landlords clarified by saying that their son was planning on moving into the rental unit with his girlfriend. They stated that on May 20, 2019, their son notified them that his girlfriend broke up with him, and would not be moving into the rental unit with him. The Landlords' son was intending to take a job offer, nearby the house, and start a life with his girlfriend but she suddenly broke up with him. The Landlords stated that their son was devastated, and didn't think he could afford to rent the basement suite on his own anymore. The Landlords stated that they had planned on renting the suite to him for around \$1,000.00.

The Landlords confirmed that they posted the ad online on May 26, 2019, to re-rent the unit after many email messages, text messages and phone calls. The Landlords stated they could have provided copies of these, but they felt it was personal information, so they were hesitant. The Landlords stated that their son, since his girlfriend broke up with him, has made lots of life changes; he is no longer taking the job nearby the rental house, he took a different job, and moved a little further away.

The Tenant stated that somehow the Landlords had photos of her unit while she was living in there, which means they somehow got access without her knowing. The Landlords confirmed that they had photos of the suite (as the Tenant was living in it)

because they attended the house for a pre-sale home inspection. The Landlords stated that they were taking lots of photos, and were genuinely excited to share the photos with different family and friends.

The Tenant stated she would have liked to stay in the unit, and she now pays hundreds of more dollars per month, because she had to find a new place. The Tenant also pointed out that the Landlords have also turned around a rented the unit for a few hundred extra per month.

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 \$800.00) because the Landlord did not use the rental unit in the manner they indicated on the Notice that was issued.

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 Landlords acknowledged that they did not use the rental unit, as they had indicated on the Notice. They reposted in for rent, rather than their son moving in. This is not in dispute. As such, it is clear that the Landlords breached section 51 of the Act, which typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlords have sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

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.*

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*

I note the Landlords explained that one of their sons broke up with his girlfriend and decided not to move into the rental unit as planned. The Landlords stated that, after their son's girlfriend broke up with him, he made a few changes in his life, and ended up living and working elsewhere. I acknowledge that the Landlords have presented some reasons as to why their son did not move in (oral testimony only, without any supporting documentary evidence). However, I find this scenario, presented by the Landlords, does

not qualify as an “extenuating circumstance”. After the Tenant moved out of the rental unit, it appears she is paying significantly more rent (several hundred more per month). It also appears the Landlord has since reposted the suite for rent for a few hundred dollars more per month. Ultimately, after having considered the totality of the evidence and testimony, I do not find this qualifies as an “extenuating circumstance”, such that it would be unreasonable or unjust for the Landlords to pay the compensation.

I award the Tenant \$9,600.00, pursuant to section 51(2) of the Act, which is 12 times her rent of \$800.00.

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

In summary, I grant the Tenant a monetary order in the amount of \$9,700.00 because the Landlord breached section 51 of the Act.

Conclusion

I grant the Tenants a monetary order in the amount of \$9,700.00. 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: October 11, 2019

Residential Tenancy Branch