



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67.

"Tenant DM" did not attend this hearing, which lasted approximately 26 minutes. The landlord's agent ("landlord"), tenant JB ("tenant"), the tenants' law student advocate ("tenants' advocate"), and the advocate's supervising lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she had permission to represent the landlord named in this application, who is her mother. The tenant confirmed that she had permission to represent tenant DM at this hearing (collectively "tenants"). The tenant confirmed that the tenants' advocate had permission to represent the tenants at this hearing. The advocate's supervising lawyer observed only and did not make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package, except for the photographs. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence package, except for the photographs. I notified both parties that I could not consider the landlord's photographs of damages to the rental unit, at this hearing or in my decision because the landlord was unable to provide a date of service or corroborating evidence regarding the adult she said that she served, who she claimed apparently resided with the tenant.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 27, 2019 ("2 Month Notice") on April 1, 2019. In accordance with sections 88 and 90 of the Act, I find that both tenants were duly served with the landlord's 2 Month Notice on April 1, 2019.

Issue to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the Act?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 15, 2004 and ended on April 30, 2019. Monthly rent of \$760.00 was payable on the first day of each month. A security deposit of \$300.00 was paid by the tenants and the landlord returned \$150.00 to the tenants and retained \$150.00. A written tenancy agreement was signed by both parties.

Both parties agreed to the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the 2 Month Notice was May 31, 2019. The reason indicated on the 2 Month Notice was:

- *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 tenants seek compensation under section 51(2) of the Act for twelve months of rent reimbursement of \$760.00, totaling \$9,120.00. The tenants claim that because the landlord did not use the rental unit for the purpose on the 2 Month Notice, they are entitled to compensation. The landlord disputes the tenants' application.

The tenant stated that the landlord's son did not move into the rental unit after the tenants vacated. She claimed that the landlords posted the rental unit for re-rental at a

higher rent of \$1,450.00 per month. She said that the landlord admitted in her evidence that she re-rented the unit at \$1,450.00 per month to new tenants.

The landlord agreed that the landlord's son did not move into the rental unit after the tenants moved out. She agreed that the landlord re-rented the unit to new tenants at a rent of \$1,450.00 per month as of July 1, 2019. She maintained that the landlord's son was supposed to move into the rental unit, as it was closer to his work and family, but he lost his job, and he has been unable to find a new job to date, as his last job offer fell through. She pointed to the record of employment and letter provided by the landlord's son. She maintained that he could not afford the rent or to pay for the renovations completed by the landlord after the tenants moved out.

The landlord said that \$15,000.00 was spent by the landlord in renovations because the rental unit was in such disrepair after the tenants moved out, particularly from the tenants smoking inside the rental unit, that it could not be predicted before the tenants moved out. The landlord provided a number of receipts and a breakdown of the renovations completed in the rental unit. She explained that the plan was for the landlord's son to move in and pay \$800.00 in rent and \$166.00 for renovations to the landlord per month, but he could not afford a higher amount for the extra renovations without a job.

The tenant disputes the landlord's claim. She explained that the letter in the landlord's evidence package, from the landlord's son, indicates that he lost his job as of January 25, 2018. She said that this was well before the 2 Month Notice was issued at the end of March 2019 and before the tenants moved out at the end of April 2019.

The tenants' advocate explained that the landlord returned half the security deposit to the tenants at the end of the tenancy, so if there were such extensive damages as claimed by the landlord, totalling \$15,000.00, the entire security deposit would have been retained by the landlord. The landlord said that she was trying to be "nice" by returning at least half of the security deposit to the tenants because she wanted them to have something. The tenants' advocate confirmed that the landlord made a number of renovations, including a new bathroom, for which the tenant is not responsible, since they are unrelated to any alleged damages created by the tenants. He stated that Residential Tenancy Policy Guideline 50 states that the landlord's failure to budget for renovations was not an extenuating circumstance under section 51 of the *Act*.

Analysis

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

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.

The following facts are undisputed. The tenants vacated the rental unit on April 30, 2019, pursuant to the 2 Month Notice, which was issued by the landlord to move her son into the unit. Although the tenants moved out one month earlier than the effective date of the notice, they are entitled to do so under the *Act*. The landlord re-rented the property as of July 1, 2019, at a higher rent of \$1,450.00, less than 6 months after the tenants moved out and the effective date of the 2 Month Notice.

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

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 find that the landlord failed to show extenuating circumstances prevented her from using the rental unit for the purpose in the 2 Month Notice. The landlord's son provided a letter claiming that he lost his job on January 25, 2018. His record of employment indicates that the last day for which he was paid was January 26, 2019. Regardless of whether this occurred in 2018 or 2019, the landlord's son was still without a job at the time that the 2 Month Notice was issued to the tenants on April 1, 2019, and when they vacated the rental unit on April 30, 2019. The landlord had an opportunity to cancel the notice before the tenants moved out and failed to do so. Regardless of the renovations completed in the rental unit, the 2 Month Notice was not issued for renovations, it was issued for the landlord's family member to move in.

I also note that the landlord made a significant profit from re-renting the property at a higher rent profit of \$690.00 per month, from the new tenants.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as the landlord or her close family members did not occupy the rental unit for at least six months after the tenants vacated on April 30, 2019. I find that the landlord failed to show extenuating circumstances prevented her from doing so.

Accordingly, I find that the tenants are entitled to twelve times the monthly rent of \$760.00, as compensation under section 51 of the *Act*, which totals \$9,120.00, from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$9,120.00, against the landlord. 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 09, 2019

Residential Tenancy Branch