



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* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing along with their legal counsel, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

This tenancy originally began as a fixed-term tenancy on May 1, 2017. The tenant moved out on September 30, 2018 after being served with a 2 Month Notice on July 27, 2018. Monthly rent was set at \$3,300.00, payable on the first of the month. The home consists of two separate suites.

The tenant is seeking compensation in the amount of \$35,000.00, which is the maximum amount she may apply for under the *Act* for the landlord's failure to comply with section 49 of the *Act*. The tenant feels that the landlord failed to use the home for the purpose indicated on the 2 Month Notice issued to her on July 27, 2018. The tenant feels that the landlord had ended this tenancy for other reasons than to occupy the home herself. The tenant and her witness testified that they had undertaken surveillance of the home after the tenant had moved out, which included at least 16 occasions when they noted the absence of the landlord's vehicle.

The landlord testified that she had purchased the two suite home as part of her long-term retirement plan. One suite was rented out to a disabled adult, while the landlord intended to reside in the other suite. The landlord testified that the home is situated in the same city as her elderly parents, and her plan to was to move back after selling her business in another city. The landlord rented out her suite to the tenant as she was still in the process of selling and transferring over her business in the other city. The landlord admitted that she did attempt to serve the tenant with a 2 Month Notice prior to July 27, 2018. The landlord testified that after the tenant had moved out on September 30, 2018, she fulfilled her obligations as required for at least 6 months.

The landlord testified that she was travelling back and forth between both homes in order to manage the transition of her business. The landlord testified that much of her time was also occupied with taking care of her elderly parents, whose health were declining. The landlord testified that she would spend 1 and a half weeks at the suite at a time, until April of 2019. The landlord testified that she would often park her car on the street, or away from the property for unrelated reasons.

The landlord confirmed that she now resides full time with her parents, and rented out her suite as of May 1, 2019. The suite was rented out to her disabled tenant as it was decided by all parties that this suite was better suited for him and his needs. The landlord then rented his suite to another tenant as of June 15, 2019. The landlord provided copies of both tenancy agreements.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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.*

Residential Tenancy Policy Guideline #2A provides more clarity about the requirements of section 49 of the Act when ending a tenancy for landlord's use.

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

The burden of proof is on the tenant to demonstrate that on a balance of probabilities that the landlord failed to use the home for its intended purpose as stated in the 2 Month Notice. Although I accept the observations of the tenant and her witness that the landlord's vehicle was almost never parked at the residence, I find that this is observation does not sufficiently support the lack of occupancy by the landlord, especially in light of the landlord's detailed evidence of the challenges she faced in juggling the sale of her business, taking care of her ailing parents, and moving from one city to another.

Although RTB Policy Guideline #2A does require 6 months of occupancy by the landlord, there is no requirement that the landlord must occupy the home full-time, or as their principal residence. The landlord's evidence was that she would intermittently reside there as she travelled between both cities. I find that the tenant has failed to provide sufficient evidence to support that the suite was used for any other purpose.

I find that the tenant has failed to meet the evidentiary burden on a balance of probabilities to demonstrate that the landlord failed to fulfill her obligations as required by the *Act*. Accordingly, I dismiss the tenant's entire application without leave to reapply.

Conclusion

The tenant's entire application is dismissed 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 22, 2019

Residential Tenancy Branch