



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 November 21, 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 Landlord and the Tenant both attended the hearing. The Landlord confirmed receipt of the Tenant's application and evidence. The Tenant confirmed receipt of the Landlord's 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

Both parties agree that monthly rent was \$1,000.00 per month.

The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) at the beginning of March 2019. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end 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 since the Landlord did not move in, and instead sold the rental unit, he wants to recover the compensation he is due (12 month's rent).

The Landlord confirmed that she was having financial difficulties and she fell behind on her mortgage payments sometime in January 2019. The Landlord stated that she was initially planning on moving into the rental unit when she issued the Notice, but the after discussing with the bank, she realized she had to sell in order to avoid foreclosure. The Landlord stated that she listed the house for sale shortly after she issued the Notice, and completed the sale on June 13, 2019. The Landlord confirmed that she never moved into the unit, as she indicated she would on the Notice. The Landlord further explained that she was hoping she could move into the unit but she did not receive the lump sum payment she was expecting.

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 \$1,000.00) 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 Landlord acknowledged that she did not use the rental unit, as she had indicated on the Notice. She sold it and did not move in. As such, it is clear that the Landlord breached section 51 of the Act, which typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that she 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 Landlord explained that she ran into financial difficulties, which is why she decided she would sell. However, I note these financial difficulties, and delinquent mortgage payments started a couple of months prior to her issuing the Notice. It appears the Landlord was aware she was in financial trouble, prior to issuing the Notice. I note the Landlord was expecting a lump sum payment from an unknown source. However, since this did not come through, she was forced to sell by the bank. I acknowledge the Landlord had financial trouble, which contributed to her decision to sell, rather than move in. However, I do not find this qualifies as an “extenuating circumstance”, such that it would be unreasonable or unjust for the Landlord to pay the compensation.

I award the Tenant \$12,000.00, pursuant to section 51(2) of the Act, which is 12 times her rent of \$1,000.00.

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

In summary, I grant the Tenant a monetary order in the amount of \$12,100.00 because the Landlord breached section 51 of the Act.

Conclusion

I grant the Tenant a monetary order in the amount of \$12,100.00. This order must be served on the Landlord. If the Landlord fails 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: November 21, 2019

Residential Tenancy Branch