



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 reconvened after an adjournment of the original hearing in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirmed receipt of the Tenant’s application for dispute resolution and evidence package.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: the tenancy started on either October 1 or 10, 2017 and ended on either January 10 or 11, 2019. On September 27, 2018 the Landlord served the Tenant with a two month notice to end tenancy for landlord’s use (the “Notice”) by posting the Notice on the door. The Notice contains a stated effective date of

November 30, 2018. The Notice states that the landlord or a close family member of the landlord is to occupy the unit.

The Tenant states that the Tenant prepared a written tenancy agreement and provided it to the Landlord for signature. The Tenant states that the agreed rent as set out on the tenancy agreement was set at \$3,200.00 per month and that this amount was paid monthly during the tenancy. The Tenant states that the Landlord signed the tenancy agreement on November 21, 2017. The Tenant states that the Landlord's one page document provided as evidence of rental payments is not correct.

The Landlord states that it does not have its own copy of the tenancy agreement. The Landlord states that the rent was only \$2,500.00 per month and provides a one-page hand written document setting out the amounts of rent collected during the tenancy. The Landlord confirms that no other records, such a banking deposit records or accounting documents, were provided as evidence of rents paid or payable during the tenancy. The Landlord states that he did not sign any tenancy agreement. The Landlord states that he trusted the Tenant and that the Tenant only gave the Landlord the last page of the tenancy agreement. The Landlord states that he was not concerned at the time and believed the tenancy agreement was accurate. The Landlord states that he is not familiar with the law or legal proceedings.

The Landlord states that the Tenant did not move out on the date required by the Notice and left the unit very dirty. The Landlord states that he only lived in the unit for 3 or 4 days, but it was too dirty to inhabit. The Landlord states that it took some time to clean the unit and that a large container was filled with the outcome of the cleaning. The Landlord states that the neighbour of the rental unit asked the Landlord if the unit could be rented and the Landlord rented the unit to this person in June 2019. Upon being referred to the Landlord's one-page evidence noting the unit rented for May 2019 the

Landlord stated that the unit was rented for May 2019. The Landlord confirms that the person who rented the unit is not a family member of the Landlord.

Analysis

Section 51(2) of the Act provides that 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.

Given the Landlord's evidence that the Landlord only lived in the unit for 3 or 4 days and then rented the unit as early as May 2019 to a person that was not a family member, I find that the Tenant has substantiated that the Landlord did not act in accordance with the Notice that ended the tenancy.

Section 51(3) of the Act provides that the landlord or, if applicable, the purchaser who asked the landlord to give the notice may be excused 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.

An unclean unit at the end of a tenancy cannot be considered extenuating circumstances as the Landlord gave no evidence of the length of time that the cleaning was required and while the evidence of a container being used at the end of the tenancy

indicates greater cleaning than normal, this does not assist in determining that extenuating circumstances stopped the Landlord from residing in the unit after the cleaning. The Landlord gave no evidence that following the cleaning the Landlord was prevented by any extenuating circumstances from residing in the unit. Rather the Landlord's evidence of a new tenant supports that the unit was livable within 6 month's time after the effective date of the Notice. There is no evidence that the two-month late move-out by the Tenant affected the Landlord's ability to move into the unit after the tenancy ended. For these reasons I find that there were no extenuating circumstances that prevented the Landlord or a close family member of the Landlord from residing in the unit.

The Tenant gave oral evidence that the rental amount paid was \$3,200.00 monthly. The Tenant provided supporting evidence of this rental amount with the tenancy agreement that was signed by the Landlord. The Landlord's evidence of not having signed a tenancy agreement is not credible given its evidence of having received the last page, the signature page, of the tenancy agreement. Further the tenancy agreement shows the Landlord's signature and the Landlord did not deny that this was his signature. While the Landlord may have only been given the signature page of the tenancy agreement, it is the Landlord's responsibility to ensure that the tenancy agreement is an accurate reflection of the terms of the tenancy. Given the Landlord's lack of credibility in relation to the written tenancy agreement and considering that the Landlord did not provide any objectively prepared accounting documents or bank statements showing rental deposits, I find that the Landlord's one-page handwritten note of lower rents paid is not sufficient to rebut the tenancy agreement terms and the Tenant's oral evidence of the monthly rent payable. For these reasons I find on a balance of probabilities that the monthly rental amount paid during the tenancy was \$3,200.00.

As the Tenant has substantiated that the Landlord did not use the rental unit as stated in the Notice and as the Landlord has not substantiated that extenuating circumstances

existed, I find that the Tenant is entitled to compensation of **\$38,400.00** (12 x \$3,200.00). As the Tenant's claim has been successful, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$38,500.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$38,500.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: December 4, 2019

Residential Tenancy Branch