



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABGHARI HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

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, pursuant to sections 51 and 67 of the *Act*; and
- recovery of the filing fee, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The respondent, who was the purchaser of the rental unit in relation to this dispute, attended with counsel, and is herein collectively referred to as "the respondent".

As both parties were present, service of documents was confirmed. The respondent confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding Package sent by Canada Post registered mail. The respondent testified that the package did not contain any of the tenant's evidence. The tenant testified that he did not keep a copy of the exact contents that were included in the package, and therefore he was unable to confirm that he had included a piece of documentary evidence that he wished to rely on at the hearing. Therefore, I advised the parties that I would not consider any of the tenant's documentary evidence as I did not have confirmation that the evidence was shared with the respondent as required by the Residential Tenancy Branch Rules of Procedure, however the tenant was at liberty to provide his verbal testimony on the evidence. The tenant confirmed receipt of the respondent's evidence sent by Canada Post registered mail. Based on the undisputed testimonies of the parties, I find that the notice of this hearing was served in accordance with section 89 of the *Act*, and only the respondent's documentary evidence served in accordance with section 88 of the *Act* and the Rules of Procedure has been considered in this matter.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as compensation provided under section 51(2) of the *Act*?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony provided in accordance with the *Act* and the Rules of Procedure, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenant testified that his tenancy in the subject rental unit began in May 2016, and that his monthly rent remained at \$3,150.00 throughout the course of his tenancy. His tenancy ended on March 31, 2018 as a result of having received a “Two Month Notice to End Tenancy for Landlord's Use of Property” (Two Month Notice) served to him by the landlord on or around January 16, 2018. The tenant testified that he received with the Two Month Notice another document, “Buyers Notice to Seller for Vacant Possession” which stated that the buyer intended in good faith to occupy the rental unit and requested that the landlord give notice to the tenant to vacate the premises by April 1, 2018.

The tenant testified that he had continued to reside in the rental building after vacating the rental unit, and that he had learned through speaking with other residents of the building and the building concierge that the respondent had renovated the rental unit instead of having a close family member move in. The tenant alleged the respondent listed the rental unit for sale several times over the course of 2018 and eventually re-rented it in August 2019.

The respondent testified that their family corporation took possession of the rental unit on April 2, 2018 and they completed some needed renovations (such as painting, new hardwood floors, appliances, countertops) prior to the respondent's brother moving in to the rental unit around the beginning of July 2018. The respondent testified that his brother continued to reside in the rental unit from July 2018 to April 2019, and that the rental unit was rented out to tenants in August 2019. In support of his testimony, the respondent referred to his submitted documentary evidence which included electricity and cable bills, and a noise complaint pertaining to the rental unit.

The tenant questioned the respondent on the low electricity bills averaging around \$10.00 per month for the first several months beginning in April 2018. The tenant testified that his average electricity bills while residing in the rental unit were around \$140.00 to \$150.00. The respondent clarified that for the first couple of months the only electricity usage was related to renovation work being done, and therefore was not reflective of normal consumption. The respondent also stated that his brother who occupied the rental unit was conscious of energy use and that the appliances used gas.

Analysis

The relevant sections of the *Act* are provided below as the legislation was written and in force at the time the tenant was issued the Two Month Notice in January 2018. Legislative changes to these sections of the *Act* that took effect in May 2018 are not retroactive.

Section 49 of the *Act* previously stated in part as follows:

- 49(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*
- (a) not earlier than 2 months after the date the tenant receives the notice...*

Section 51 of the *Act* previously stated, in part, as follows:

- 51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

...

- (2) In addition to the amount payable under subsection (1), if*
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*
- the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

Therefore, in this matter, I find the determinative issue is whether the respondent used the rental unit for the stated purpose given for ending the tenancy within a reasonable period of time after obtaining possession of the rental unit.

As I found the tenant's documentary was not served in accordance with the Rules of Procedure and therefore was not considered in this matter, I have relied only on the respondent's submitted documentary evidence and the sworn testimony of both parties.

The respondent confirmed in his testimony that they took possession of the rental unit on April 2, 2018, undertook some renovations to the rental unit, and that his brother began living in the rental unit around July 2018.

Residential Tenancy Policy Guideline #50. Compensation for Ending a Tenancy provides the following interpretation of a “reasonable period” and “accomplishing the purpose” for ending the tenancy, in part, as follows:

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord’s close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

..

Accomplishing the Purpose/Using the Rental Unit

...

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

Having considered the testimony and evidence presented, and based on the requirements of section 51(2) of the *Act* and the interpretation provided in the Policy Guideline #50, on a balance of probabilities I find that the respondent did not use the rental unit for the purposes stated on the Two Month Notice, specifically, that his close family would be living in the rental unit, within a reasonable period after the effective date of the Notice, as it took almost three months before the respondent’s brother began living in the rental unit. Further, the respondent undertook renovations to the rental unit which was not listed as the stated purpose for issuing the Two Month Notice.

I find that the tenant is entitled to monetary compensation in accordance with the provisions of section 51(2) of the *Act* as it was written prior to the legislative changes that took effect May 2018. As the tenant’s monthly rent payable under the tenancy agreement was \$3,150.00, I find

that the statutory monetary compensation, equivalent to double the monthly rent, amounts to a monetary award of \$6,300.00.

As the tenant was successful in obtaining a monetary award through his Application, I find that he is entitled to recover the cost of the filing fee from the respondent in the amount of \$100.00.

Therefore, I grant a Monetary Order in the favour of the tenant of \$6,400.00.

Conclusion

The tenant is granted a Monetary Order of \$6,400.00 as statutory compensation and recovery of the filing fee.

The tenant is provided with this Order in the above terms. Should the respondent fail to comply with this Order, the tenant is required to serve this Order on the respondent and this Order may be filed in the Small Claims Division of the Provincial Court, where it will 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: December 18, 2019

Residential Tenancy Branch