



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 tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for \$9,600 representing 12 times the amount of monthly rent, pursuant to sections 51 and 62 of the Act.

All 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 landlords were assisted by a translator.

The tenant testified, and the landlords confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. I find that the landlords were served with the required documents in accordance with the Act.

The landlords provided no documentary evidence in support of their application.

Preliminary Issue - Amendment of Parties

On the notice of dispute resolution, the tenant named the landlord as "K , PP". At the hearing, the landlords clarified that there were two landlords: "KP" and "PP". All parties agreed that the application should be amended so as to substitute the names "KP" and "PP" in place of "K , PP". Accordingly, I order that this be done. The full names of the landlords are reproduced on the cover of this decision.

Issues to be Decided

Is the tenant entitled to a monetary order in the amount of \$9,600?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement starting August 1, 2014. No written tenancy agreement was submitted into evidence. The rental unit is a basement suite. The landlords live in the upstairs suite. At the start of the tenancy, monthly rent was \$750. At some point in 2018, the monthly rent was raised to \$800. Then, by consent of all parties, the landlords rented out a portion of the rental unit to another individual selected by the tenant (this individual is not named as a party on in this application). The tenant described this person as his "sub-tenant". However, he testified (and the landlords agreed) that once this individual moved in, the tenant paid monthly rent of \$500 directly to the landlords and the new occupant paid monthly rent of \$500 directly to the landlords.

At the start of the tenancy, the tenant paid the landlord a security deposit of \$375. The landlord returned this amount at the end of the tenancy.

On February 13, 2019, the landlords personally served the tenant with a Two Month Notice to End Tenancy (the "**Notice**"). Neither party entered a copy of the Notice into evidence, but the parties agreed on the information contained thereon. The Notice had an effective date of April 15, 2019. The tenant vacated the rental unit on March 31, 2019, and the landlords gave him \$500 representing his final month's rent and returned his security deposit to him. The other occupant remained in the rental unit until the end of April 2019.

The Notice specified that the reason for ending the tenancy was that "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)."

Tenant's Position

The tenant alleged that a close family member of the landlords did not move into the rental unit after the end of the tenancy. He alleged that the landlords evicted him so they could rent out rental unit at a higher rate. The only documentary evidence he provided

in support of this was a scan of an envelope from the Canada Revenue Agency addressed to “PN” at the street address of the residential property (it does not indicate whether the address is for the basement suite or the upper suite). I am unsure how the tenant came into possession of this envelope.

The tenant also testified that he believes a close family member of the landlords is not living in the rental unit due to the condition of exterior of the rental unit. He provided no documentary evidence to show what the exterior of the rental unit looked like or elaborated as to why the condition of the exterior of the rental unit would prove that a close family member of the landlords did not live there.

Additionally, the tenant testified that the reason the landlords ended the tenancy was due to an incident between him and the other occupant which occurred on February 13, 2019, which led to the police being called. The tenant testified that the incident was the result of a misunderstanding between him and the other occupant, and that he did not instigate or escalate it.

The tenant argued that he was a good tenant for five years, and the basis for his eviction was unjust, and that he was caused significant harm by the eviction.

The tenant argues that he is entitled to \$9,600, representing 12 times the amount of his highest monthly rent (\$800).

Landlord's Position

The landlords testified that “PN” is their nephew, and that he lives in the upper suite with them, and not the rental unit as alleged by the tenant. They testified that their son (“HP”) moved into the rental unit on May 15, 2019 and continues to reside there. They provided no documentary evidence supporting this testimony.

Analysis

Status of Other Occupant

Based on the testimony of the parties, I find that the other occupant of the rental unit was not a sub-tenant of the tenant, but rather was a tenant of the landlord. I base this finding on the fact that the other occupant paid the landlords monthly rent directly. In a

sub-tenancy, a sub-tenant pays would pay the tenant monthly rent, and then the tenant would pay the landlord.

Additionally, I find that he was not a co-tenant of the tenant. Instead, I find that the other occupant and the tenant each had a separate tenancy agreement with the landlords. I base this finding on the facts that the landlords permitted each of them to vacate the rental unit at different times, and that the landlord provided the tenant with \$500 (representing one month's rent) when he moved out prior to the effective date of the Notice (in accordance with sections 50 and 51(1) of the Act). If the tenant and the other occupant were co-tenants under the same tenancy agreement, the tenant would not have been entitled to \$500, rather both would have had to vacate at the same time and would have been jointly entitled to \$1,000 (if they vacated prior in accordance with sections 50 and 51(1) of the Act).

Tenant's Claim

The tenant's claim for compensation is based on section 51(2) of the Act. It states:

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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the tenant has the onus to prove that the landlords or a close family member did not move into the rental unit within a reasonable period following the effective date of the Notice or did not remain there for at least six months.

I note that the motivation of the landlord for issuing the Notice is not a factor to be considered under section 51(2). Similarly, the effect of the end of tenancy had on the tenant is not a factor to be considered. As such, I do not need to consider the events that led to the Notice being issued nor whether the tenant suffered distress as a result of the tenancy being ended. I must only look to see if either of the conditions set out at 51(2) are satisfied.

Section 49(1) defines close family member:

"close family member" means, in relation to an individual,
(a) the individual's parent, spouse or child, or
(b) the parent or child of that individual's spouse;

Accordingly, I find that the landlords' son is a close family member of the landlords.

Based on the testimony of the parties, I find that the tenant has failed to prove it is more likely than not that the landlords failed to comply with section 51(2) of the Act.

The tenant's claim relies almost exclusively on unsupported allegations and conjecture. The only documentary evidence he provided in support of his allegations is the piece of mail addressed to PN. This piece of mail does not indicate where PN lives (whether in the upper suite or the rental unit). The landlords testified that PN lives in the upper suite. The tenant provided no evidence (either documentary or testimony) to dispute this. As such, I accept the landlords' testimony on this point.

I accept the landlords' testimony that HP moved into the rental unit on May 15, 2019. There is no reasonable basis in the evidence (either the tenant's testimony or the documentary record) for me to find otherwise.

I find that by moving into the rental unit on May 15, 2019, HP moved in within a reasonable period of time following the effective date of the Notice, given that the other occupant did not vacate the rental unit until the end of April.

I accept the landlords' testimony that HP has remained in the rental unit for at least six months following the effective date of the Notice.

As such, I find that the landlords have not met either requirement of section 51(2) of the Act which would require that they pay the tenant 12 times the amount of monthly rent.

Accordingly, I dismiss the tenant's application without leave to reapply.

Conclusion

I dismiss the tenant's application 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: December 18, 2019

Residential Tenancy Branch