



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

This hearing dealt with an application by the tenant under the Residential Tenancy Act (the “*Act*”) for the following:

- A monetary order in an amount equivalent to two times the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- Reimbursement of the filing fee under section 72.

The tenant and the landlord attended the hearing. The hearing process was explained, and each party was given the opportunity to ask questions. Both had an opportunity to provide affirmed testimony, call witnesses and submit documentary evidence.

No issues of service were raised; the exception was the landlord’s assertion he did not receive a copy of the tenant’s Monetary Order Worksheet which will accordingly not be considered by me in my Decision. Otherwise, I find each party served the other pursuant to the requirements of the *Act*.

This hearing is a continuation of a hearing which began on August 17, 2019. At that time, the Arbitrator adjourned the hearing as the tenant was unable to attend under the terms of a Decision filed September 5, 2019.

The landlord provided a corrected version of the spelling of his last name. His name has been corrected throughout.

Issue(s) to be Decided

Is the tenant entitled to:

- A monetary order in an amount equivalent to two times the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- Reimbursement of the filing fee under section 72.

Background and Evidence

The parties agreed that the month-to-month tenancy began on May 1, 2016 and ended when the tenant vacated on September 30, 2017 pursuant to a Two Month Notice to Vacate for Landlord's Use effective September 30, 2017 (the Notice"). Rent was \$940.00 monthly. The security deposit paid at the beginning of the tenancy was returned to the tenant.

The parties agreed that the landlord advertised the unit for rent of \$1,500.00 on November 12, 2019; a copy of the ad was submitted by the tenant which stated that the unit was available "November 1 or earlier". Pursuant to section 51(2), the tenant received one month's rent as compensation prior to leaving the unit.

The landlord testified as follows. The landlord purchased the property on September 30, 2017 and intended a close family member, that is, his common law spouse, to occupy the unit. The landlord explained that the spouse was a member of the Armed Forces and was expected to be stationed in the municipality in which the unit is located.

The landlord testified that he, the landlord, occupied the upstairs apartment in the building from October 1, 2017 until he discovered that considerable repairs were necessary to the apartment. Beginning mid-October 2017, the landlord moved into the unit while renovations took place upstairs.

The landlord advertised the unit for rent on November 12, 2019 as being available November 1, or earlier, as stated above.

On November 21, 2017, the landlord testified he learned his partner would not be stationed in the area after all. Accordingly, when the renovations were completed upstairs, the landlord moved from the unit to the upstairs apartment in mid-December 2017, having occupied the unit for two months.

The landlord testified the unit, rented to the tenant for \$940.00 monthly, was rented to another occupant on January 1, 2019 for \$1,500.00 monthly.

The tenant claimed that the landlord did not comply with the provisions of the Act and therefore she is entitled to two months' rent as compensation, as was the allowable amount under the Act at that time. The tenant asserts that the landlord did not occupy the rental unit for the purpose stated on the Notice for a period of six months.

The landlord claimed that "extenuating circumstances" were the reason he was unable to comply with the Act. That is, the landlord expected his spouse would occupy the unit and was unexpectedly unable to do so for reasons relating to the spouse's employment, supporting evidence for which was submitted by the landlord.

The landlord asserted that the tenant is not entitled to any compensation.

Analysis

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

This application involves consideration of the applicable sections of the Act in effect at the time dealing with the termination of tenancy by the landlord for the landlord's use of the property.

Section 49 provides in part as follows:

49 (2) Subject to section 51 [...], 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 not earlier than 2 months after the date the tenant receives the notice...

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenant testified that she accepted the Two Month Notice and vacated as requested on September 30, 2019.

Section 51 provided in part as follows (emphasis added, as the section was in force at the relevant time):

(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 **2 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.

In this case, there is no dispute the unit was occupied by the landlord from two weeks after the tenant vacated on September 30, 2019 for a period of two months. As acknowledged by the landlord, three months after the tenant vacated, the landlord rented the unit for substantially more monthly than the tenant paid.

The onus is on the tenant to establish their claim under section 51(2) that steps have not been taken, within a reasonable period after September 30, 2019, to accomplish the stated purpose for ending the tenancy, that is, to have a close family member of the landlord's move in to the unit, or that 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.

Policy Guideline # 50, Compensation for Ending a Tenancy provides guidance for determination of issues under section 51(2), stating, in part, as follows [emphasis added]:

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Considering the evidence submitted by both parties, the Act and the Guideline, I find the

tenant has met the burden of proof on a balance of probabilities to establish their claim under section 51(2), that is, that the rental unit was not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. This finding is based on the landlord's acknowledgement that no close family member of the landlord lived in the unit outside of the period from mid-October 2017 to mid-December 2017 when the landlord occupied the unit.

The landlord argued there were "extenuating circumstances" pursuant to section 51(3) that prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy. That is, the landlord claimed the family member who was supposed to move in to the unit when the tenant vacated, the landlord's common law spouse, was unexpectedly stationed elsewhere through the spouse's employment.

Policy Guideline # 50, Compensation for Ending a Tenancy provides guidance on defining extenuating circumstances. The Policy states as follows [emphasis added]:

E. EXTENUATING CIRCUMSTANCES

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**.*

□□...

*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

Considering all the evidence submitted, the *Act* and the Guidelines, I find the landlord has not met the burden of proof under section 51(3) that there were extenuating circumstances within the meaning contemplated justifying the landlord's failure to comply with section 51(2).

I have carefully considered and weighed all the evidence provided by the landlord as

well as the submissions. I find the landlord's testimony not to be credible. I find it perplexing that the landlord advertised the unit for rent prior to learning his spouse was not able to occupy the unit. I found the landlord evasive and unconvincing. I do not give much weight to his testimony.

I find it unlikely the landlord ever intended that a close family member would occupy the unit. I find the landlord's version of events to be implausible and unconvincing; I surmise that the landlord intended to re-rent the unit at a higher rent when he served the Notice on the tenant.

I find the landlord has benefited financially from the tenant vacating the premises, as the landlord acknowledged, as the unit was rented within 3 months at a substantially increased rent; this further casts doubt in my mind on the assertion that the unit was to be occupied by a close family member, and the increased rent to a new tenant was fortuitous, unanticipated and unplanned.

Considering all the evidence and the burden of proof on a balance of probabilities, I find that the landlord's Notice for intended occupation by a close family member to have been created solely for the purpose of getting the tenant to leave.

I therefore find the landlord has failed to establish extenuating circumstances pursuant to section 51(3).

In conclusion, I find the tenant has established their claim under section 51(2). Accordingly, pursuant to the provisions of section 51(2) as it was in effect at the time, I award the tenant an amount that is the equivalent of 2 times the monthly rent payable under the tenancy agreement, that is \$1,800.00 ($\$940.00 \times 2 = \$1,880.00$).

As the tenant was successful in her claim, I award the tenant reimbursement of the filing fee in the amount of \$100.00.

I therefore grant the tenant a monetary order of \$1,980.00 calculated as follows:

ITEM	AMOUNT
Section 51(2) rent: $\$940.00 \times 2 = \$1,880.00$	\$1,880.00
Reimbursement of filing fee	\$100.00

TOTAL MONETARY AWARD TO TENANT	\$1,980.00
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Conclusion

I grant a monetary order in favour of the tenant in the amount of **\$1,980.00**.

The landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: December 24, 2019

Residential Tenancy Branch