



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

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

Background and Evidence

This fixed tenancy began on March 1, 2018. Monthly rent was set at \$2,100.00, payable in advance on the first of each month. The tenant paid a security deposit in the amount of \$1,050.00.

It was undisputed by both parties that the tenant moved out on February 28, 2019 as per a 2 Month Notice issued to her by the landlord on January 20, 2019. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "the rental unit will be occupied by the landlord or the landlord's spouse or close family member of the landlord or the landlord's spouse".

The tenant is seeking compensation as the landlord did not use the home for the purpose indicated on the 2 Month Notice. The landlord confirmed in the hearing that the intention was for her to move into the home with her child, but due to a change in circumstances, the landlord ended up delaying the move in, and eventually made the decision to advertise the home for rent instead. The landlord now resides with her parents, and re-rented the home as of mid-May 2019. The landlord provided a statement in her evidence that detailed the circumstances behind her decision. The landlord requests that her circumstances be considered, as well as her intentions at the time the 2 Month Notice was issued to the tenant.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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 have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord re-rented the home instead of occupying it. By doing so, the landlord failed to comply with section 49(3) of the *Act*.

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the *Act*.

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 find that the reasons provided for re-renting are not sufficient to support that there were extenuating circumstances that prevented the landlord from using the rental unit for the stated purpose. Although I am sympathetic towards the fact that the landlord faced some difficult decisions in her life, I find that the landlord failed to comply with the *Act*. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times

the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of \$25,200.00.

As the tenant was successful in her claim, I find that she is also entitled to recover the filing fee for this application.

Conclusion

I issue a \$25,300.00 Monetary Order in favour of the tenant in compensation for the landlord's failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 23, 2019

Residential Tenancy Branch