



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.

The landlord attended the hearing along with articling student EK. The tenant was also present. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

This month-to-month tenancy began on October 1, 2016. The tenant moved out on July 31, 2019 after being served with a 2 Month Notice on May 15, 2019. Monthly rent was set at \$1,404.00, payable on the first of the month.

The tenant is seeking compensation in the amount of \$16,848.00, which is the maximum amount he may apply for under the *Act* for the landlord's failure to comply with section 49 of the *Act*. The tenant feels that the landlord failed to use the home for the purpose indicated on the 2 Month Notice issued to him.

The landlord does not dispute that the home was sold instead of being occupied by the landlord or a close family member. The executor of the estate is the son in law of the original owner of the home, who had passed away. The landlord issued the 2 Month Notice to honour the wishes of the deceased as she had purchased the rental unit for her grandchildren. The landlord testified that at the time the tenant was served with the 2 Month Notice, the intention was for one of the 18 grandchildren to move into the home. The landlord testified that 15 of the grandchildren do not reside in the country, and the granddaughter who was to move in had changed her mind due to extenuating circumstances. The landlord testified that due to work commitments in another province, she had decided to stay in that province instead of moving into the home. The landlord testified that this was a last minute decision that could not be foreseen.

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.*

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 have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord had sold the rental unit instead of using the rental unit for the stated purpose on the 2 Month Notice. In consideration of Policy Guideline #50 and the definition of “extenuating circumstances”, I find that the reasons provided for selling the home instead are not sufficient to support that there were extenuating circumstances that prevented the landlord or a close family member from occupying the home.

Although I accept the testimony of the landlord that the landlord had issued the 2 Month Notice in good faith, the landlord failed to fulfill their obligations as required by section 49(3) of 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 \$16,848.00.

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

Conclusion

I issue a \$16,948.00 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: January 6, 2020

Residential Tenancy Branch