



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence (1 month notice dated April 30, 2019) via Canada Post Registered Mail on October 2, 2019. The landlord confirmed receipt of the notice of hearing package and argued that she did not receive a copy of the 1 month notice dated April 30, 2019. Discussion between all the parties resulted in the landlord confirming that she did have a copy of the 1 month notice dated April 30, 2019 that was served to the tenant. The landlord provided evidence that the tenant was served with the submitted documentary evidence via Canada Post Registered Mail and has provided a copy of the Canada Post Receipt dated December 23, 2019. As such, I find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 1, 2017 on fixed term tenancy ending on February 28, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 2, 2017. The monthly rent began at \$1,200.00 payable on the 1st day of each month. A security deposit of \$600.00 was paid on February 11, 2017.

Both parties confirmed the landlord served the tenant with the 2 months notice to end tenancy issued for landlord's use via email. The notice provides for an effective end of tenancy date of July 1, 2019. The reason selected was "The rental unit will be occupied by the landlord or the landlord's close family member (parent, or child; or the parent or child of that individual's spouse). Both parties confirmed the tenancy ended on May 25, 2019 after the tenant had vacated the rental unit and a condition inspection was conducted by both parties.

The tenant seeks a monetary claim of \$14,976.00 which consists of:

\$1,248.00 X 12 months

Compensation, Sec. 51(2)

The tenant provided undisputed affirmed testimony that at the end of tenancy his monthly rent was \$1,248.00 and that he had vacated the rental unit on May 25, 2019.

The tenant argued that the landlord had failed to occupy the basement rental unit for the stated purpose for at least 6 months after the notice was effective. The tenant stated that on November 15, 2019 the tenant was in contact with the previous next door neighbor at the rental unit. The tenant stated that he was informed by that person that he was now a tenant occupying the basement rental unit as of November 1, 2019.

The landlord stated unforeseen circumstances occurred with her upstairs tenant regarding a dog issue. The landlord stated that her son and his girlfriend moved into the basement rental unit in June 2019. The landlord stated that it was always her intent for the landlord's son to occupy the upstairs rental space, but that in August 2019 the upstairs tenant vacated the rental unit due to the dog issue. The landlord then decided that her son and his girlfriend would then move upstairs into that space. The landlord stated that subsequently the basement rental unit was re-rented to a new tenant.

Analysis

Section 51 of the Act states that a tenant who receives a notice under section 49 is entitled to receive from the landlord subject to subsection (3) an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if 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.

In this case both parties confirmed that the landlord served the tenant with a 2 month notice to end tenancy issued for landlord's use dated April 30, 2019. The landlord provided undisputed affirmed testimony that her son and his girlfriend moved into the basement rental space June 1, 2019, but subsequently vacated it and moved into the upstairs rental space on September 1, 2019, 3 months later. A new tenant moved into the rental unit on November 1, 2019.

The tenant provided undisputed affirmed evidence that at the end of tenancy the monthly rent due was \$1,248.00.

In this case, it is clear based upon the undisputed evidence of both parties that the tenant vacated the rental unit on May 25, 2019. The landlord's son moved in June 2019 and vacated the rental unit on September 1, 2019 to move into the upstairs rental space. As such, the landlord's son occupied the basement rental unit for approximately 3 months before moving. A new tenant moved into the basement rental unit on November 1, 2019 approximately 5 months after the tenant had vacated the rental unit. On this basis, the landlord has failed to use the rental space for the stated purpose for at least a 6 months period.

Subsection 51 (3) of the Act states in part that the landlord may be excused from paying the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord from using the rental unit for the stated purpose for at least 6 months duration, beginning within a reasonable period after the effective date of the notice.

The definition of extenuating circumstances means "making forgivable. The adjective extenuating is unusual because it's almost always used with the word circumstances; the phrase extenuating circumstances describes the specific reason that excuse or justify someone's actions.

The landlord has stated that “unforeseen circumstances” occurred when the upstairs rental tenant vacated the upstairs unit. The landlord decided that the landlord’s son and his girlfriend would move into the upstairs unit on September 1, 2019.

I find that the landlord has failed to provide details of extenuating circumstances that prevented the landlord from using the rental unit for the stated purpose for at least 6 months’ duration. In this case, the landlord’s circumstances surround the use of the upstairs rental unit which is unrelated to the landlord’s 2 month notice for landlord’s use for the basement unit, which was to have her son occupy the basement rental unit. The landlord chose to have her son move into the upstairs unit after 3 months of occupying the basement rental. The landlord had a choice to serve the upstairs tenant for the 2 month notice instead of the basement tenant or when it was vacated by the tenant, to rent the upstairs unit to a new tenant.

Based upon the above, I find that the tenant has established a claim for \$14,976.00 which is equal to 12 months of rent at \$1,248.00 per month. The landlord has failed to use the basement rental unit for the stated purpose for at least 6 months duration.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$15,076.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: February 5, 2020

Residential Tenancy Branch