



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDCT, FF

Introduction

On July 31, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the Act. A hearing was scheduled for November 18, 2019 at 1:30 PM and only Tenant A.K. attended that hearing. In that Decision, dated November 18, 2019, the Arbitrator was satisfied that the Landlord was sufficiently served the Notice of Hearing package and the hearing proceeded where the Tenants were awarded a Monetary Order for compensation.

On December 12, 2019, the Landlord made an Application for Review Consideration based on not being able to attend the original hearing and a Review Hearing was granted.

On December 19, 2019, the Review Hearing was scheduled to be heard on February 25, 2019 at 9:30 AM. The purpose of the reconvened hearing was to hear matters in relation to the original Application. In this Decision, I will confirm, vary, or set aside the original Decision and Order, dated November 18, 2019.

Both Tenant A.K. and the Landlord attended the Review Hearing. All parties provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing and evidence package by hand to the Tenants on December 28, 2019 and then he also placed this package in the Tenants’ mailbox. The Tenant advised that she received the Notice of Hearing package and the Review Consideration decision in her mailbox and then received the same package with the Landlord’s evidence on January 2, 2020. While each party’s testimony was conflicting about service, as A.K. confirmed that she received the Notice of Hearing package and the Landlord’s evidence, I am satisfied that the Tenant received the Notice of Hearing package and evidence, and that the hearing could proceed.

The Tenant advised that she served her Application for Dispute Resolution and her evidence to the Landlord by registered mail on December 29, 2019 and January 2, 2020. The Landlord acknowledged receiving these packages. As a result, I am satisfied that the parties complied with service requirements for documents and that the hearing could proceed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2017 and the tenancy ended when the Tenants vacated the premises on May 1, 2019 based on service of the Notice. Rent was established at \$500.00 per month and was due on the first day of each month. A security deposit of \$250.00 and a pet damage deposit of \$250.00 were also paid.

The reason the Landlord checked off on the Notice was "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The Notice was served by the seller of the rental unit on February 12, 2019 and the effective end date on the Notice was noted as May 1, 2019.

The Tenant advised that she received a call from her brother's realtor who stated that the Landlord's plans had changed, and he might need someone to rent the property. After moving out, she looked at online postings and found the rental unit being advertised for rent on May 8, 2019. She referenced copies of the online post that she submitted as documentary evidence. As such, she is seeking compensation in the amount equivalent to twelve months' rent (**\$6,000.00**) pursuant to Section 51(2) of the *Act* as she was served the Notice and the Landlord failed to use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

The Landlord advised that he took possession of the whole house on May 2, 2019, that he never posted that online ad, and that the phone number associated with the post is not his. He stated that a friend moved in with him in September 2019. He submitted that the photos in the online ad are not his and he questioned why he would even have them. He stated that all of the bills were in his name, as well as the insurance, and he referenced a copy of his insurance papers that he submitted as documentary evidence, to support his position. He confirmed that he rented out the rental unit on January 15, 2020.

The Tenant submitted that the realtor had access to the pictures that were posted in the online ad. She confirmed that the seller of the rental unit had the bills in his name only until the time of the sale. She stated that when she served the original Notice of Hearing package, she questioned why the Landlord's father did not advise her that he did not live at that address anymore. Despite her speculation that the Landlord did not occupy the rental unit after the effective date of the Notice, she confirmed that she did not have any evidence to support this allegation.

The Landlord advised that he had a falling out with his family for a time and had not been on speaking terms with them. He reiterated that the Tenant did not present any evidence supporting that he did not move into the rental unit after the effective date of the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord enters into an agreement in good faith to sell the rental unit, where all the conditions on which the sale depends have been satisfied, and where the purchaser asks the Landlord, in writing, to give notice to end the tenancy because the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

With respect to the Tenants' claim for twelve-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated February 12, 2019 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) 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.*

In addition, regarding the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

When reviewing the totality of the evidence before me, at the time the Notice was served, the Landlord advised that his intention was to move into the rental unit and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

I understand the Tenant's concerns with respect to her doubts that the Landlord did not use the property for the stated purpose; however, the burden of proof is on the Tenants to substantiate their claims. While she has provided a copy of an online advertisement that the rental unit was for rent, she has submitted insufficient evidence to substantiate that the Landlord did not occupy the rental unit after the effective date of the Notice. I find that most of her submissions are based on speculation, without definitive evidence such as statements from others confirming that the rental unit was indeed rented to another tenant.

When weighing this against the Landlord's insurance documentation and his affirmed testimony that he moved into the rental unit for at least six months after the effective date of the Notice, I do not find that the Tenants' scant evidence is persuasive or compelling enough to outweigh the Landlord's evidence. Therefore, on a balance of probabilities, I am satisfied that the Landlord used the property for the stated purpose and did not contravene the *Act* in this circumstance.

As such, I am satisfied that the Tenants are not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, and I dismiss their claims on this issue in

its entirety. Consequently, I set aside the original Decision and Order dated November 18, 2019, and that Order is now unenforceable.

As the Tenants were not successful in their claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution without leave to reapply. In addition, I set aside the original Decision and Order dated November 18, 2019.

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: March 4, 2020

Residential Tenancy Branch