



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Counsel for the landlord attended the hearing.

Both parties agreed that the tenant served the landlord with his application for dispute resolution via registered mail. I find that the landlord was served with the tenant's application in accordance with section 89 of the *Act*.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on or around May 15, 2013 and ended on May 31, 2019. Monthly rent in the amount of \$860.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental building is a house with one upper suite and two lower suites. The landlord lives in one of the lower suites and the tenant lived in the neighboring lower suite.

The landlord testified that he personally served the tenant with a Two Month Notice for Landlord's Use of Property (the "Two Month Notice") but could not recall on what date. The tenant testified that the landlord personally served him with the Two Month Notice on March 8, 2019. The Two Month Notice was entered into evidence.

The Two Month Notice is dated March 8, 2019 and has an effective date of May 31, 2019. The Two Month Notice states the following reason for ending this tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord testified to the following facts. The landlord issued the tenant with the Two Month Notice because his wife, who lives in another country, planned on moving to Canada to help take care of him due to some health issues. The landlord's suite is not large enough for he and his wife to live in, so he planned on removing the wall between the lower suites and residing in the combined suites with his wife. The landlord entered into evidence a signed letter from his wife which states:

I herbay [sic] declare my intention to move to Canada with my lawful husband [landlord's name] at his home in [address of subject rental property]. My arrivall [sic] is to be expected at the beggining [sic] of May, 2019. As we will be in need of bigger space I would like to kindly ask to vacant all firsdt [sic] floor premises of the house.

The above letter is not dated.

The landlord testified that his wife decided that she did not want to move to Canada because she was sick and did not speak English. The landlord testified that he and his wife divorced last month. No divorce papers were entered into evidence. The landlord entered into evidence a signed letter from his wife dated November 8, 2019 which states:

I'm lawfull [sic] wife of [landlord and address of subject rental property]. We where [sic] merried [sic] in [city in Canada]. I live in [another country]. This letter is to explain why I'm not coming to Canada and to clarify time period when I change my intention to live with [the landlord at the subject rental property].

Most of the time [the landlord] was staying with me in [another country] and I was visiting during holidays. I was planning to finnaly [sic] move in with [the landlord at the subject rental property] in May 2019. Than I change my heart and after some arguments about our future I decided not to come. Our relationship got worse. I told it to Gabriel over the phone calls we where having in Jun. 2019.

The landlord testified that a few months after the tenant moved out of the subject rental property, a person he is not related to moved in. The new tenant is not currently paying rent but will pay rent once his separation from his wife is complete and he has access to the proceeds from the sale of his home. The tenancy agreement between the new tenant and the landlord was entered into evidence. It states that the new tenancy started on August 1, 2019 and is a fixed term tenancy ending on May 1, 2020. The rent is \$750.00 per month.

The tenant testified to the following facts. The tenant and the landlord share utilities, and each pay 50% of the bill. Approximately 1-2 weeks prior to being served with the Two Month Notice the landlord asked the tenant to pay 2/3rd of the bill and he refused. The landlord only served him with the Two Month Notice because he refused to pay a larger percentage of the utilities.

When asked to respond to the above testimony, the landlord testified that the tenant was a drunk all the time and was a bad tenant but did not dispute the above testimony.

Counsel for the landlord submitted that the tenant received proper notice to end tenancy under the *Act* and that it was the landlord's change of circumstances which led to a non-family member moving into the subject rental property. Counsel for the landlord submitted that the landlord's circumstances changed after the tenant was served with the Two Month Notice.

Analysis

Section 49(3) of the *Act* states that 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.

Section 49(1) of the *Act* defines close family member as:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

Section 51(2) of the *Act* states that 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.

Section 51(3) of the *Act* states that 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.

Based on the evidence of both parties I find as follows:

- Service of the Two Month Notice was effected on the tenant on March 8, 2019, in accordance with section 88 of the *Act*.
- The tenant moved out of the subject rental property in accordance with the Two Month Notice.

- After the tenant moved out, the rental unit was not occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Given my above findings, the landlord is required, pursuant to section 51(2) of the *Act*, to pay the equivalent of 12 months' rent to the tenant, unless extenuating circumstances prevented the landlord from 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, pursuant to section 51(3) of the *Act*.

Residential Tenancy Policy Guideline #50 states:

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

The only evidence the landlord provided regarding his wife/ex-wife's intention and or plans to move into the subject rental property and the cancellation of those plans were two signed letters from his wife/ex-wife. The landlord did provide any further documentation such as travel plans, and or flight confirmations. The landlord testified that he has since received a divorce from his wife but no documents to support this testimony were entered into evidence.

The tenant testified that the landlord evicted him because of a dispute about the utility bill, and not because his wife/ex-wife intended on moving into the subject rental property. When asked to respond to the above testimony, the landlord did not refute it, but accused the tenant of being a drunk. Based on the lack of evidence provided by

the landlord and the landlord's testimony in response to the tenant's allegations, I am not satisfied that the landlord's wife/ex-wife intended on moving into the subject rental property.

In the event that the landlord's wife/ex-wife did intend on moving into the subject rental property, I find that the landlord and his wife/ex-wife's change of heart as to whether or not their relationship would continue does not constitute an extenuating circumstance. An extenuating circumstance is an event that cannot be anticipated. I find that it is highly unlikely that there were no signs or signals that the relationship between the landlord and his wife was in jeopardy. I find that prior to serving the tenant with the Two Month Notice, the landlord had an obligation to take steps to confirm that his wife would be moving into the subject rental property. Such steps would include booking flights and having conversations about the reality of moving to a country in which you do not speak the language. The landlord entered no evidence to prove that such steps were taken.

I find that the tenant is entitled to recover the equivalent of 12 months' rent from the landlord, in the amount of \$10,320.00, pursuant to section 51 and 67 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$10,320.00.

The tenant is provided with this Order in the above terms and 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: March 10, 2020

Residential Tenancy Branch