



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0774886BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 12, 2019 (the "Application"). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant filed an amendment seeking \$4,611.12 as compensation under section 51 of the *Residential Tenancy Act* (the "Act") and \$1,351.64 for loss and damages for moving costs. The amendment also includes a request for an order that the Landlord comply with the Act, regulations or tenancy agreement.

The Tenant appeared at the hearing with four witnesses. I obtained the phone numbers for the witnesses and had them exit the conference call until required. The Tenant did not end up calling any of the witnesses given the issues before me and position of the parties. The Tenant did say she wished to call one of the witnesses and outlined the expected testimony; however, the Landlord agreed with the points outlined and therefore hearing from the witness was not necessary. The Tenant also sought to call a witness to describe the affect the eviction had on the Tenant. I told the Tenant I could hear this from her and did hear the Tenant on this issue. In the result, none of the witnesses were called at the hearing.

The Representative for the Landlord appeared at the hearing with Legal Counsel.

The Tenant confirmed at the outset that she is seeking compensation in the amount of \$5,962.76 in relation to the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 15, 2018 (the "Notice").

I explained to the Tenant that an order that the Landlord comply with the *Act*, regulations or tenancy agreement is a moot point at this time as the Landlord is no longer the Tenant's landlord. The Tenant confirmed her requests are covered by the compensation request. I did not hear the Tenant on a request for the Landlord to comply with the *Act*, regulations or tenancy agreement and this request is dismissed without leave to re-apply.

I explained the hearing process to the parties who did not have questions when asked. The Tenant and Representative provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

Legal Counsel confirmed receipt of the hearing package and Tenant's evidence. Legal Counsel took issue with a "without prejudice" letter that had been exchanged between the parties and submitted by the Tenant. I told the parties I did not see why I would rely on this letter and did not go into this issue further.

The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence pointed to during the hearing and all oral testimony and submissions of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It was between the Representative's father-in-law and the Tenant. The tenancy started September 01, 1987 and was a month-to-month tenancy. The parties agreed rent was \$1,010.74 at the end of the tenancy. Rent was due by the first day of each month.

The parties agreed the Landlord became the owner of the rental unit in 2007.

The parties agreed the tenancy ended May 31, 2018.

The Notice was submitted. It had an effective date of May 31, 2018. The grounds for the Notice were that “the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.”

The parties agreed the Tenant was served with the Notice March 18, 2018.

The Tenant provided the following testimony and submissions in relation to her request for compensation.

She is entitled to more than the two months compensation set out in section 51 of the *Act* because of the severity of what occurred. She is seeking the difference between her old rent and new rent for 12 months. She is also seeking moving costs.

The Landlord did not accomplish the reason for the Notice. The Representative did not move her son into the rental unit for six months. The rental unit sat unused and unoccupied for 18 months which is not allowed under the Notice. The rental unit has now been vacant for 22 months.

The Landlord renovated the rental unit. The Notice is the wrong notice to end a tenancy for renovations. She should have been served a notice to end tenancy for renovations and she would have disputed it.

The Notice was retaliatory and a result of the Tenant exposing the Landlord's neglect of needed repairs.

The Landlord violated section 49 of the *Act* which requires that the Notice be issued in good faith. The Notice was not issued in good faith as required. There was another unit in the building that the Representative's son could have moved into when the Notice was issued.

Had the Notice been issued two months later, the penalty would have been 12 months rent.

An arbitrator has the authority to award more than the two months set out in section 51 of the *Act* under section 67 of the *Act*. Further, if there are multiple violations under the *Act*, the Landlord should be required to pay compensation over and above the two months set out in section 51 of the *Act*.

The Tenant testified about the impact the Notice had on her life.

Legal Counsel made the following submissions.

The Representative's son has not moved into the rental unit. This is due to extenuating circumstances. There was another rental unit available in the building when the Notice was issued; however, it was larger and the rent was higher. The Representative wanted her son in the building as a manager and wanted to do this at the lowest cost. The rental unit had not been renovated since the 1960s. The Representative had not seen the rental unit for many years and when she did she realized the wear and tear on the rental unit. The Representative got contractors in to do renovations and expected this to take two to three months. The renovations have taken much longer due to issues with the contractors.

Legal Counsel acknowledged that extenuating circumstances were not part of the relevant legislation and raised this issue because the Tenant is seeking compensation over and above the two months set out in section 51 of the *Act*.

Legal Counsel advised that the Landlord is disputing the amount sought by the Tenant because it is not provided for in the *Act*.

Legal Counsel denied that the Landlord acted in bad faith in issuing the Notice and denied that the Notice was retaliatory.

Legal Counsel agreed that the Representative's son did not move into the rental unit, the rental unit was renovated and the rental unit had been vacant for 18 months at the time the Application was filed.

I note that I have reviewed all of the evidence submitted and read all of the Tenant's submissions.

Analysis

There is no issue that the Tenant was served with the Notice March 18, 2018 as the parties agreed on this.

The legislation in place on March 18, 2018 applies to this matter.

There is no issue that the Notice was issued pursuant to section 49(4) of the *Act* which stated:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The *Act* specifically set out the compensation the Tenant is entitled to if the Landlord failed to follow through with the stated purpose of the Notice in section 51(2):

(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

There is no issue that the Notice was served on the Tenant so the Representative's son could move into the rental unit. The parties agreed on this. This is stated in a letter to the Tenant dated February 20, 2018.

There is no issue that the Representative's son did not move into the rental unit, that the rental unit was renovated and that the rental unit was vacant for at least 18 months. Legal Counsel acknowledged these points.

Policy Guideline 2A was put in place in 2019. However, I find the statements made in it apply to the Notice despite it being issued in 2018 as the Policy Guideline clarifies the meaning of “occupy” which is used in both the old and new legislation.

It is clear from Policy Guideline 2A that “occupy” means to occupy for a residential purpose and that the rental unit needs to be used as living accommodation or as part of living space. It is also clear that a landlord cannot issue a notice to end tenancy under section 49(4) of the *Act* and leave the rental unit vacant and unused.

I am satisfied that the Representative’s son did not move into the rental unit and that the rental unit has been renovated and otherwise vacant and unused since the Tenant vacated given the position of both parties on these points. I am satisfied the Landlord failed to follow through with the stated purpose of the Notice. I am satisfied that the Landlord did not use the rental unit for the stated purpose of the Notice for at least six months beginning within a reasonable period after the effective date of the Notice.

As stated, the legislation in place on March 18, 2018 applies. The relevant legislation did not allow for extenuating circumstances and therefore the reasons for the Landlord failing to follow through with the stated purpose of the Notice are not relevant.

I find section 51(2) of the *Act* applies and the Landlord must pay the Tenant the equivalent of double the monthly rent payable under the tenancy agreement being $\$1,010.74 \times 2 = \$2,021.48$.

I do not agree that the Tenant is entitled to more than the compensation set out in section 51(2) of the *Act* on the bases set out by the Tenant. In my view, the legislation contemplated the appropriate penalty when a landlord ended a tenancy under section 49 and failed to follow through with the reason for ending that tenancy. In my view, the legislation is clear, and the appropriate penalty is clear.

I acknowledge that the legislation has changed such that the penalty is now 12 months rent. However, the new legislation does not apply to this matter given when the Notice was served.

I acknowledge that the eviction had a substantial impact on the Tenant. However, I do not agree that this is a factor to consider under either the old or new legislation.

I acknowledge that the Tenant set out a number of issues with the eviction. However, I find that all of these issues are encompassed by section 51 of the *Act* which sets out the

appropriate penalty when a landlord fails to follow through with the stated purpose of a notice issued under section 49 of the *Act*. I do not agree that this amount should change based on the reasons the landlord failed to follow through as the *Act* does not provide for this.

I am satisfied the Tenant is entitled to compensation in the amount of \$2,021.48. Given the Tenant has been partially successful in this application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to compensation in the amount of \$2,121.48 and I issue the Tenant a Monetary Order in this amount.

Conclusion

The Tenant is entitled to \$2,121.48 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this 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 *Act*.

Dated: March 31, 2020

Residential Tenancy Branch