



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 an Application for Dispute Resolution (the “Application”) that was filed on November 17, 2019 by the Tenant under the *Residential Tenancy Act* (the “Act”). The Tenant is seeking a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 1, 2017. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$717.50 which was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$350.00 and a pet damage deposit in the amount of \$200.00. The parties agreed that both deposits have since been returned to the Tenant. The Tenancy ended on May 31, 2019.

The parties testified and agreed that the Landlord served the Tenant with the Two Month Notice dated April 26, 2019, with an effective vacancy date of June 30, 2019. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"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 souse)."

The parties testified and agreed that after receiving the Two Month Notice, the Tenant served the Landlord with her notice to end tenancy on April 29, 2019. The Tenant indicated on the notice that she was seeking to end the tenancy as of May 31, 2019. The parties agreed that the Tenant vacated the rental unit on May 31, 2019 in compliance with the Two Month Notice.

The Landlord stated that he moved into the rental unit on June 1, 2019. The Landlord stated that he intended to save some money and reside in the rental unit while also travelling abroad. The Landlord stated that there was a change to his circumstance and that he decided to re-rent the rental unit.

The parties testified and agreed that the Landlord advertised the rental unit for rent as of October 15, 2019. The Landlord stated that he found a perspective occupant to rent his rental unit, however, he realized that he had not occupied the rental unit himself for at least six months after the Tenant moved out of the rental unit. The Landlord stated that he delayed the commencement of the new tenancy until December 1, 2019 at which point, he felt as though he was within his right to re-rent the rental unit.

The Tenant stated that after seeing that the Landlord had advertised the rental unit for rent, she felt as though he had not followed through on the intended purpose of the Two month Notice for at least six months following e effective date of the Two Month Notice. The Tenant also stated that the Landlord had advertised the rental unit for significantly more rent. As such, the Tenant feels as though she is entitled to monetary compensation in the amount of \$8,610.00, which represents twelve times the amount of

rent. If successful, the Tenant is also seeking the return of their filing fee paid to make the Application.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenant is claiming compensation in the amount of \$8,610.00 which represents twelve months of rent as the Landlord did not follow through on the intended purpose of the Two Month Notice for at least six months after the effective date of the notice.

According to Section 50(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by;

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

I accept that the Landlord served the Tenant with a Two Month Notice dated April 26, 2019, with an effective date of June 30, 2019. I accept that after receiving the Two Month Notice, the Tenant provided the Landlord with her notice to end tenancy on April 29, 2019 indicating that she was seeking to end the tenancy early on May 31, 2019.

According to Section 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

I accept that the Landlord's testimony and evidence provided in which indicated that he moved into the rental unit on June 1, 2019 before re-renting the rental unit to a new occupant on December 1, 2019.

While I am satisfied that the Landlord occupied the rental unit, which was the intended purpose of the Two Month Notice, I find that the Landlord did not use the rental unit for that stated purpose for at least 6 months' duration, after the effective date of the notice. The parties agreed that the effective date of the Two Month Notice was June 30, 2019, therefore, the Landlord would have been required to occupy the rental unit at least until December 31, 2019. As the Landlord re-rented the rental unit on December 1, 2019, I find that he did not fulfill the requirements of Section 49 of the *Act*.

Based on the above I find that the Tenant is entitled to \$8,610.00 in compensation from the Landlord, pursuant to section 51(2) of the *Act*. As the Tenant was successful in their application, I also find that she is entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$8,710.00.

Conclusion

The Landlord has not taken steps to accomplish the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$8,710.00.

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: April 15, 2020

Residential Tenancy Branch