



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 25, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

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

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer 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

The Tenant sought \$17,628.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) based on 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 June 14, 2019 (the “Notice”).

The parties agreed on the following. There was a written tenancy agreement between the Tenant and an agent for the Landlord in relation to the rental unit. The tenancy started July 2012. Rent at the end of the tenancy was \$1,469.00 due on the first day of each month. The tenancy ended July 31, 2019.

The parties agreed the Tenant was served with the Notice in June of 2019.

The Notice had an effective date of August 31, 2019. The grounds for the Notice were that the rental unit would be occupied by the Landlord or the Landlord’s close family member.

The Tenant submitted an email from the Landlord sent June 22, 2019 stating that her daughter would be moving into the rental unit.

The Tenant provided written submissions which outline what he submits are key events in the tenancy. These can be summarized as follows.

In February of 2017, there were communications between the parties about the Landlord wanting to do renovations in the rental unit and the Tenant needing to vacate. The Tenant was then told the Landlord would not be doing renovations.

In March of 2019, the Tenant received communications about the rental unit being listed for sale.

On June 20, 2019, the Tenant received the Notice.

On June 22, 2019, the Tenant received an email from the Landlord stating the rental unit was no longer for sale and her daughter would be moving in.

On July 31, 2019, the Tenant vacated the rental unit.

On August 09, 2019, the Tenant attended the rental unit to pick up items he had left behind. The Tenant saw that the flooring in the rental unit had been ripped up and there were tools and a shop vacuum on the floor.

On November 14, 2019, the Tenant discovered that the rental unit had been listed for sale again.

On November 25, 2019, the Tenant learned the rental unit had been sold.

At the hearing, the Tenant added the following. The rental unit sold in January of 2020. He did a land title search recently and confirmed the rental unit had been sold. The intent of the Landlord when issuing the Notice was to sell the rental unit and that is what the Landlord did.

The Tenant further testified as follows. The rental unit did not look lived-in when he attended August 09, 2019. There was no furniture or personal items in the rental unit.

The Landlord testified as follows. Her daughter moved into the rental unit in the first or second week of August. Her daughter lived in the rental unit until April of 2020. It is not correct that she evicted the Tenant to sell the rental unit. The rental unit was for sale during the tenancy. There was no reason to evict the Tenant to sell the rental unit. She wanted the rental unit for her daughter.

The Landlord further testified as follows. The rental unit was originally listed for sale around March of 2019. It did not sell and she did not get any offers on it. The 90-day contract with the realtor expired and the rental unit was taken off the market.

In relation to the renovations the Tenant observed in August of 2019, the Landlord testified that only the flooring was changed because her daughter could not have carpeting in the rental unit. The Landlord testified that the carpet was old and not in good shape.

The Landlord testified that the rental unit was listed for sale again in November of 2019. She stated that the rental unit was sold in January of 2020. The Landlord testified that the purchasers have no relation to her and that her daughter signed a tenancy agreement with the purchasers.

The Landlord submitted documentary evidence to support that her daughter lived in the rental unit from August of 2019 to April of 2020 including hydro bills, credit card statements, a Form K, tenancy documents and a photo of her driver's licence.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) 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 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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.

I am satisfied based on the documentary evidence submitted by the Landlord that her daughter lived in the rental unit from August of 2019 to April of 2020. In particular, the hydro bills and credit card statements support this.

I am satisfied the Landlord's daughter moved into the rental unit prior to the effective date of the Notice which was August 31, 2019.

I am satisfied based on the testimony of the Landlord that the Landlord changed the flooring in the rental unit after the Tenant vacated and prior to her daughter moving in. I am not satisfied based on the evidence provided that any further renovations were done. I am satisfied that the Landlord was permitted to change the flooring for her daughter.

As stated, the effective date of the Notice was August 31, 2019. The Landlord's daughter was required to occupy the rental unit until the end of February of 2020. As stated, I am satisfied the Landlord's daughter lived in the rental unit until April of 2020, past the six month requirement.

I am satisfied the rental unit was used 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 I am satisfied the Landlord's daughter lived in the rental unit from August of 2019 to April of 2020.

I acknowledge that the rental unit was sold in January of 2020. However, I am not satisfied this changes the analysis. The Landlord's daughter had to occupy the rental unit for six months and did so. I am not satisfied the Tenant is entitled to compensation under section 51(2) of the *Act* in the circumstances.

Given the Tenant was not successful in the Application, I decline to award him reimbursement for the \$100.00 filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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: April 29, 2020

Residential Tenancy Branch