



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant filed an application for Dispute Resolution (the “Application”) on December 15, 2019 seeking compensation for monetary loss or other money owed. Additionally, the tenant seeks reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on May 19, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenant and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, both parties confirmed they received the evidence prepared by the other and had the opportunity to review that material. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss or compensation pursuant to section 51 and 67 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement they signed with the previous landlords on June 21, 2016. This was for a fixed term that ended October 31, 2017. The rent was \$1,900.00, payable on the first day of each month. The tenant paid a security deposit of \$950.00 and a pet damage deposit of \$100.00.

The landlord here purchased the property on August 27, 2017 and took possession on February 8, 2018. Both parties in the hearing confirmed there was no new tenancy agreement at that time. When completing the purchase, the landlord asked the seller to issue a Two Month Notice to End Tenancy, for the reason that “the purchaser or a close family member intends in good faith to occupy the rental unit.”

The landlord outlined the subsequent history on family members occupying the unit upon their taking possession of the unit.

The landlord here named two individuals who maintained occupancy of the unit. First the initial plan and intention of the landlord was to have their spouse’s parent move in – almost immediately upon the tenant’s move out date of June 2, 2018. The spouse’s parent, for entirely personal reasons, decided otherwise.

Second, and concurrent to this, the landlord’s parent was living with the landlord in a separate home. Upon the other parent changing their mind and not moving in, this landlord’s parent took up living in the rental unit. The landlord presents that this living arrangement was in place from June 6, 2018, through to February 2019. They provided a statement from the landlord’s parent dated April 23, 2020 where they state they moved in on June 6, 2018, then remained there until January 2019. This is supplemented with bills in that parent’s name for the rental unit address.

In a statement dated October 8, 2019, the tenant states that the tenancy ended on June 30, 2018, as per a previous Arbitrator’s ruling in this matter. They moved out on June 2, 2018.

On December 29, 2018, the tenant discovered a Craigslist ad for the rental unit, with a listed rental amount of \$2,600.00 per month. This is “less than 6 months after the tenancy ended.” The tenant states that upon having early conversations with the landlord – i.e., before the landlord took possession in early 2018 – the landlord had stated that they planned to increase the rent amount and arranged showings for potential new tenants. They provided a copy of an earlier Craigslist ad for the unit from September 2017.

The landlord provides that this was based on early discussion with the terms of the sale, and details in the agreement between the tenant and the previous landlord, when the tenancy would then have been ending.

Analysis

Under section 49(5), of the *Act* a landlord may end a tenancy if a purchaser, or a close family member, intends in good faith to occupy the rental unit.

Under section 51 of the *Act*, a landlord must pay a tenant 12 times the amount of monthly rent where the landlord or close family member has not lived there for a duration of at least six months.

In order to make a finding of fact, and thereby determine an entitlement of compensation, I shall determine whether or not the close family member of the landlord has lived in the unit for six months.

Section 49(1) defines “close family member” as “the individual’s parent. . .or. . .the parent or child of that individual’s spouse.” I am satisfied the individuals in question who occupied the unit throughout the latter half of 2018 fit this definition.

I find as fact that a close family member of the landlord occupied the unit from June 2018 to January 2019. The evidence for this is the statement of the family member dated April 22, 2020. Also, there are utility bills in the evidence which show the family member as the user. I find this statement carries more weight in showing what was actually happening in the rental unit in terms of its occupation, rather than an advertisement that the landlord states was posted for one week.

In line with this, what the tenant presents on discussions held prior to the sale carries no weight against the evidence showing actual use by a family member. The evidence shows the previous fixed tenancy was ending in October 2017; logically that fact generated discussions among the parties.

The tenant takes issue with an ad on Craigslist for the rental unit. The advertised rental amount of \$2,600.00, and the ad shows the unit is available on January 15, 2019.

I find there is no evidence to show there was rent or other compensation, neither paid nor received, between the landlord and another separate tenant throughout this time. There is no evidence that any other party – other than the landlord’s parent – lived in the unit for any amount of rent. Following from this, I find there is no evidence to show the landlord accepted rent – even from a family member -- that was higher than what the tenant here was paying until the end of the tenancy in May 2018.

Moreover, the ad shows an availability date of January 15, 2019. This is outside of the six-month time period delineated by section 51. I find the ad itself, as provided by the tenant, does not show the landlord acted contrary to their original stated intention when they issued the Two Month Notice to the tenant on February 2, 2018.

In sum, the factual underpinning of a living arrangement with a close family member was in place, and that was not undone by an advertisement for the unit that gave a future availability date. I find it perfectly legitimate for the landlord to canvas for future interest in the unit.

For this reason, I find the tenant has not presented enough evidence to show, on a balance of probabilities, that they are entitled to compensation for a breach of the *Act* by the landlord.

The tenant also makes a claim for moving expenses, for \$5,000. This is for “the expenses and stress of moving during a difficult time in [their] life.”

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As above, I find the landlord did not violate the *Act*, regulation or tenancy agreement as presented by the tenant. This is regarding the use of the rental unit by the landlord, in line with the reason for issuing the Two Month Notice to End Tenancy.

When evaluating the tenant’s submission and evidence, I find the amount of \$5,000.00 is not quantified. That is to say, the amount of \$5,000.00 is an arbitrary amount, and does not reflect tangible measurable damage. The tenant does not establish the value of the damage or loss. They did not present an impact to finances or personal expenses, and there is no itemizing of expenses. As such, the tenant has not established the value of the damage or loss.

For the reasons outlined above, I find the tenant has not presented a preponderance of evidence to show on a balance of probabilities that they are entitled to compensation for damages or loss that is the responsibility of the landlord.

As the tenant was not successful in this hearing, they are not entitled to recover the filing fee for their Application.

Conclusion

For the reasons above, I dismiss the tenant's Application in its entirety and without leave to reapply.

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: June 10, 2020

Residential Tenancy Branch