



Dispute Resolution Services

Page: 1

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.

The landlord, the landlord's wife, landlord's counsel and the tenant 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 confirmed that the landlord received the tenant's application for dispute resolution and evidence via registered mail. I find that the landlord was served with the tenant's application for dispute resolution and evidence in accordance with section 88 and 89 of the *Act*.

The tenant testified that she received the landlord's evidence package via email and had an opportunity to review the evidence prior to today's hearing. I find that the tenant was served with the landlord's evidence in accordance with the Residential Tenancy Branch Director's Order dated March 30, 2020.

Issues 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 in November of 2016 and ended on November 15, 2019. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord and was returned to the tenant at the end of the tenancy. This tenancy agreement was oral, not written.

Both parties agree that the landlord verbally informed the tenant in August of 2019 that he intended on settling the subject rental property. Both parties agree that the subject rental property was marketed for sale. Counsel submitted that the landlord was not able to find a buyer.

The tenant testified that the landlord verbally asked her to move out of the subject rental property before he sold it so that he could properly stage it for sale. The tenant testified that she agreed and moved out on November 15, 2019. The landlord testified that he never asked the tenant to move out and that she did so on her own accord.

Both parties agree that the landlord did not charge the tenant rent for November 1-15, 2019 rent and provided her with a further \$1,000.00.

The tenant testified that she attended at the subject rental property on December 31, 2019 to collect rent and found it occupied by short term renters.

The tenant testified that she is seeking 12 months' rent because the landlord did not sell the subject rental property as he had told her he would and rented it out for short term rentals.

Both parties agree that the landlord did not serve the tenant with either a Two Month Notice to End Tenancy for Landlord's Use of Property or a Four Month Notice for Demolition, Renovation or Conversion.

Counsel for the landlord submitted that since a written Notice to End Tenancy was not served on the tenant and the landlord never asked the tenant to move out, the tenant is not entitled to 12 months' compensation under section 51 of the *Act*.

Analysis

Section 49(5) of the *Act* states:

- (5)A landlord may end a tenancy in respect of a rental unit if
 - (a)the landlord enters into an agreement in good faith to sell the rental unit,
 - (b)all the conditions on which the sale depends have been satisfied, and
 - (c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii)the purchaser 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.

Section 51 of the *Act* states:

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.

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

The triggering event for the possibility of compensation under section 51 of the *Act*, is the service on the tenant of a written Notice to End Tenancy pursuant to section 49 of the *Act*. That Notice to End Tenancy must conform to the form and content

requirements of section 52 of the *Act*. Because a section 49 Notice to End Tenancy was not served on the tenant, the tenant is not entitled to section 51 compensation. The tenant's application is therefore dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed 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 *Residential Tenancy Act*.

Dated: June 01, 2020

Residential Tenancy Branch