



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act* and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. The landlord's agent attended the hearing. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of the other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to compensation?

Background and Evidence

The tenancy started in June 2018. The monthly rent was \$1,400.00 due in advance on first day of each month. The tenant moved out on December 09, 2019 pursuant to a notice to end tenancy for landlord's use of property. The tenant agreed that he received from the landlord, compensation in the amount of one month's rent.

On November 24, 2019, the landlord had served the tenant with a two month notice to end tenancy for landlord's use of property, with an effective date of January 25, 2020. The tenant filed a copy of the notice to end tenancy.

The reason for the notice was that the landlord or a close family member of the landlord intended to move into the rental unit. The landlord stated that he intended to move into the rental unit along with his family and mother-in-law who would assist with the caring of their children.

The landlord stated that his mother-in-law left the country on December 02, 2019 and was due to return at the end of March 2020. A copy of her air ticket was filed into evidence. The landlord submitted that due to the Pandemic his mother-in-law was unable to return to Canada as scheduled and therefore he had to cancel his plans to move into the rental unit.

The landlord stated that the rental unit was at a fair distance from their current residence and the original plan included his mother-in-law looking after his children while he and his spouse commuted the extra distance to work. The landlord was firm in his testimony that in the absence of his mother-in-law, he was unable to accomplish the move into the rental unit.

The tenant stated that some time later he noticed that the unit was being advertised as available for rent at a higher rent of \$1,600.00. The landlord testified that he entered into a contract with a property rental company on March 31, 2020, to find a tenant for the rental unit. The property management company advertised the availability of the rental unit and a new tenant was found for June 01, 2020.

The landlord filed a copy of the new rental agreement. The new tenants moved into the rental unit on June 01, 2020 at a higher rent of \$1,600.00. The term of the agreement is a fixed term of one year which will end on May 31, 2021.

Analysis

Based on the documents filed into evidence and on the testimony of both parties, I find that the landlord served the tenant with a s.49 notice to end tenancy on November 24, 2019 with an effective date of January 25, 2020.

The reason for the notice as check marked on the notice to end tenancy is that the landlord or a close family member intended to move into the rental unit. The landlord agreed that neither he nor a close family member moved into the rental unit as of the date of the hearing. The landlord admitted that a new tenant moved into the rental unit on June 01, 2020, at a higher rent of \$1,600.00.

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement.

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 as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the reason for the notice was that the landlord or a close family member intended to move into the rental unit.

The landlord stated that at the time he served that tenant with the notice of hearing, he intended to move into the rental unit, but his plans changed due to the Pandemic, which prevented his mother-in-law's return to Canada. The landlord hired a property management company to find a tenant for the rental unit. The contract with this company was effective March 31, 2020. A new tenant was found for June 01, 2020 at a higher rent for a fixed term of one year.

If the landlord's move into the rental unit was contingent on his mother-in-law's availability and had to be cancelled when she was not available to move in, then the timing of the notice to end tenancy does indicate good faith on the part of the landlord. The landlord's mother-in-law left the country shortly after the notice was served on the tenant and was not due to return until March 29, 2020.

The landlord hired a property management company on March 31, 2020, to find a tenant for the rental unit. The new tenant signed a fixed term one-year lease which will end on May 31, 2021.

I find on a balance of probabilities that it is more likely than not that the landlord did not act in good faith when he served the tenant with a notice to end tenancy on November 24, 2020 with an effective date of January 25, 2020. At the time of service of the notice to end tenancy, the landlord knew full well that his mother-in-law was going to be away until March 31, 2020 and that his move into the rental unit depended on her availability to move in along with the landlord and his family.

In addition, by hiring a property management company on March 31, 2020, to find a tenant for the rental unit at a higher rent, further confirms that the landlord did not act in good faith when he served the tenant with the notice to end tenancy.

If the landlord intended to move into the rental unit when his mother-in-law returned, then he would not have rented the unit to a new tenant for a fixed term of one year with an end date of May 31, 2021.

Based on the testimony of the landlord and the documents filed into evidence I find that the landlord's family did not move into the rental unit and are now unable to move in until May 31, 2021. Therefore, I find that the landlord did not accomplish the stated purpose for ending the tenancy under section 49 and accordingly he must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement. The monthly rent was \$1,400.00 and therefore the landlord must pay the tenant \$16,800.00 as compensation.

Since the tenant has proven his case, I award him the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$16,900.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents 12 months' rent plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$16,900.00**.

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 22, 2020

Residential Tenancy Branch