



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Real Property Management Central
LP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed.

The tenant and landlord's agent for the company representing the owner of the residential property (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence prior to the hearing.

Thereafter the parties were provided the opportunity to present their affirmed testimony and to refer to relevant evidence submitted prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The tenant filed an amendment to her application, as the total monetary claim was above the statutory limitation of \$35,000. The amendment was required in order to include the excess over \$35,000. There were no issues raised regarding the service of the tenant's amended application, as she said it was included as part of her original application.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord for a monetary loss or other money owed?

Background and Evidence

The undisputed evidence is that this tenancy began on October 6, 2018 and ended on January 18, 2020. The monthly rent at the beginning and end of the tenancy was \$3,900. Filed into evidence was a copy of the written tenancy agreement.

The tenant submitted that she vacated the rental unit on or about January 18, 2020, in response to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

This Notice was issued by the landlord, was dated December 8, 2019, signed by the agent here for the named company landlord, served to the tenant that date, and listed an effective move-out date of February 29, 2020. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenant's evidence showed that she chose to accept that the tenancy was ending as she vacated the rental unit pursuant to the Notice.

In support of her application, the tenant said she was informed that the rental unit was sold after the tenancy ended. This was confirmed in a March 3, 2020, email from the landlord's agent. The tenant also provided documentary evidence showing the house with a "for sale" sign and a listing notice. The tenant also provided evidence from the listing agency indicating the home was listed and that the owners had never lived in the home.

The tenant submitted that she is entitled to compensation equivalent to 12 months' rent, as the landlord did not use the rental unit for the stated purpose listed on the Notice. The tenant's monetary claim is \$46,800.00.

Landlord's response-

The landlord submitted that the residential property was listed for sale throughout the tenancy and the tenant always knew it was for sale.

The landlord submitted that the owners had always been respectful of the tenant during the tenancy and even retracted the sale for a couple of months, so that the tenant could enjoy the Christmas holidays. The landlord submitted that the owners always had honest intentions and never acted in bad faith in this tenancy.

The landlord said that the owners intended to move into the rental unit, until it sold. The landlord confirmed that the sale of the home took place the first week in March and that the new owners took possession of the home on March 12, 2020.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In this instance, the tenant is required to prove her claim, on a balance of probabilities.

In the case before me, the undisputed evidence shows that the tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. In this case, the Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

Therefore, the landlord or close family member must occupy the rental unit for six months starting within a reasonable amount of time after the effective end of tenancy listed on the Notice and to fulfill the purpose stated on the 2 Month Notice that was served upon the tenant.

Section 51(2) provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

Having reviewed and considered the parties' respective oral, documentary and digital evidence, I find the tenant has met her burden of proof.

The landlord confirmed that the landlord/owners never lived in the rental unit after the tenancy ended and that the residential property was sold in the first week in March 2020, with the new owners taking possession on March 12, 2020. I therefore find the landlord is not using the rental unit as a living accommodation and therefore, it is not and has not been used for the stated purpose listed on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in this case, February 29, 2020.

The landlord has not presented evidence of extenuating circumstances.

While I acknowledge that the period of 6 months has not yet passed since the effective date, I find the almost immediate sale of the rental unit prevents the landlord from ever being able to take reasonable steps to accomplish, or to actually accomplish the stated purpose listed on the Notice.

The landlord ought to have waited for the purchaser to request in writing the landlord issue a Two Month Notice to End Tenancy for Landlord's Use of Property, after the conditions for the sale of the rental unit have been satisfied.

I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent, which in this case was \$3,900 per month.

As to the amount of that compensation in excess of the statutory limitation of \$35,000.00 allowed under section 58(2), I refer to Tenancy Policy Guideline 27. This section states that if the claim is for compensation under section 51(2) or 51.3 of the Act, as is the case here, the director will accept jurisdiction if the claim is for an amount over the small claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount, and mitigation is not a consideration.

Based upon my interpretation of section 51(2) of the Act and Policy Guideline 27, I find the tenant is entitled to a monetary award equivalent to 12 months' rent under the tenancy agreement, and in this case, the monthly rent was \$3,900. I find this amount is not for damage or loss, but is for compensation due under the Act.

I therefore grant the tenant a monetary award of \$46,800, the equivalent of monthly rent of \$3,900 for 12 months.

Due to the above, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$46,800.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the landlord the order to be enforceable. The landlord is advised that costs of such enforcement are recoverable from the landlord.

I note that both parties submitted evidence in relation to the good faith and honest intentions of the landlord. I find it important to explain that the matter of the landlord's good faith in issuing a Two Month Notice to End Tenancy for Landlord's Use of Property would be relevant had the tenant filed an application for dispute resolution to dispute the Notice.

The tenant did not file to dispute the Notice, rather she chose to accept the Notice.

As this was the tenant's application seeking compensation, the relevant evidence related only to whether the landlord had used the rental unit for the stated purpose listed on the Notice. Therefore, the only evidence considered and referred to in making this Decision was the evidence directly related to the landlord's use of the rental unit, listed on the Notice.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent is granted. The tenant has been granted a monetary order for \$46,800.

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: July 17, 2020

Residential Tenancy Branch