



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 32 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Both parties verbally confirmed that they were ready to proceed with the hearing and they did not have any objections to proceeding.

During the hearing, the tenant stated that she was not pursuing her claim for utilities of \$55.00 and she would not do so in the future. I notified her that this portion of her application was dismissed without leave to reapply. The tenant confirmed her understanding of same.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 9, 2011 and ended on December 1, 2019. A written tenancy agreement was signed by both parties. Monthly rent of \$1,856.28 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant and the landlord returned a portion of the deposit, as agreed to by the tenant. The rental unit is the upper floor of a house, where other tenants reside on the lower floor.

Both parties agreed that the tenant vacated the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 17, 2019 ("2 Month Notice"). Both parties agreed that the notice had an effective move-out date of November 30, 2019. A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice is:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The tenant seeks compensation under section 51(2) of the Act for 12 months' rent compensation of \$1,856.28, totaling \$22,275.36. She claimed that she was renovicted by the landlord to complete renovations and re-rent it to new tenants. She said that she did not know whether the landlord rented the unit to new tenants, but she thought he might have. She stated that she drove by the rental unit numerous times in February and March 2020, and once in June 2020. She claimed that the lights were never on, even when she drove by at night, and she did not think anyone was living there. She maintained that she spoke to two neighbours and they told her that no one was living at

the rental unit after she moved out. She testified that she did not ask these neighbours for letters confirming same because she did not want to put them in a bad position because they have to live near the landlord's property and deal with the landlord. She also noted that when she called the Residential Tenancy Branch ("RTB"), they told her that she did not have to provide any proof for this hearing, only the landlord did.

The tenant claimed that she did not know whether the landlord's daughter was living at the rental unit but stated that at least until the date of her application on February 21, 2020, no one was likely living there. She stated that she did not get a response from the tenants living on the lower floor of the rental property and from some neighbours, when she inquired whether the landlord's daughter moved into the rental unit. She maintained that all but one of the landlord's letters provided for this hearing, did not have any dates on them, indicating when the landlord's daughter moved into the rental unit. She stated that she does not think that the landlord's letters are false, but she does not know who is living at the rental unit, if anyone. She said that the landlord's daughter's driver's license document does not have a date, even though it has the rental unit address on it.

The landlord disputes the tenant's application for 12 months' rent compensation based on the 2 Month Notice. He claimed that his daughter moved into the rental unit on January 10, 2020, after painting and repairing of walls was completed. He said that his daughter continues to live in the rental unit now, as of the date of this hearing. He stated that the lights not being on, as claimed by the tenant, is not an indicator that his daughter does not live at the rental unit. He confirmed that he provided five letters for this hearing, from the former tenant, the current tenants, and neighbours to the east and west of the rental property, which confirm that his daughter lives at the rental unit. He stated that he also provided a copy of his daughter's driver's license renewal document, with the rental unit address on it, from April 14, 2020, which is her birthday. He claimed that just because four of his letters did not have dates of when his daughter moved in, does not mean that the people who wrote them are lying.

Analysis

Section 49(3) of the *Act* states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member intends in good faith to occupy the rental unit.

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

51 (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.

I make the following findings, on a balance of probabilities, based on the testimony and evidence of both parties. The tenant vacated the rental unit on December 1, 2019, pursuant to the 2 Month Notice. I find that the tenant provided insufficient evidence to show that the landlord's daughter did not move into the rental unit, that the rental unit was unoccupied, or that it was occupied by other people.

I accept the landlord's affirmed testimony that his daughter moved into the rental unit on January 10, 2020 and she continues to live there as of the date of this hearing on July 2, 2020, which is a period exceeding six months. I accept the landlord's five letters, from the former tenant, current tenants, and three neighbours of the rental property, which confirms that the landlord's daughter lives in the rental unit. These people have seen and interacted with the landlord's daughter, as indicated in the letters. I do not attach any less weight to or question the authenticity of four of the five letters, simply because they did not include dates of when the landlord's daughter moved in. I find that the tenant did not provide sufficient reasons to question the letters or their authenticity.

I find that the tenant did not provide sufficient witness or documentary evidence that the landlord's daughter does not live at the rental unit, there are other people living there, or the unit is unoccupied. The tenant claimed that she spoke to two neighbours, but she did not get letters from them, nor did she ask them to testify at this hearing as witnesses. The tenant could not be sure that the landlord's daughter was not living at the rental unit. I do not find the absence of lighting in a house, whether at nighttime or otherwise, to be an indicator of occupancy in a rental unit.

I find that the landlord took steps, within a reasonable period after the tenant vacated the rental unit on December 1, 2019, to accomplish the purpose for ending the tenancy as per the 2 Month Notice. I find that the landlord's daughter moved into the rental unit on January 10, 2020, after some minor renovations were completed, and that she continues to live there, more than six months later. Therefore, I find that the landlord used the rental unit for the reason indicated in the 2 Month Notice.

On a balance of probabilities and for the reasons stated above, I dismiss the tenant's application for 12 month's rent compensation of \$22,275.36, without leave to reapply.

As the tenant was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire 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: July 02, 2020

Residential Tenancy Branch