



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* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord was represented by their counsel, DW ("landlord"), in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Counsel for the landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on October 1, 2013. This tenancy was renewed on a fixed term basis in June of 2019, with monthly set at \$1,600.00, payable on the first of every month. The tenant paid a security and pet damage deposit in the amounts of \$800.00 each deposit, which were dealt with at the end of the tenancy. Both parties agreed that the fixed-term tenancy would end on February 29, 2020, and the tenant moved out at the end of February 2020 as discussed with the landlord. The landlord had communicated to the tenant that they wished to relocate back to Canada after living in Singapore for 20 years. Both parties confirmed that the landlord did not serve the tenant with a 2 Month Notice to End Tenancy for Landlord's Use, but that they had exchanged emails, and confirmed on the tenancy agreement that the tenancy was to end at the end of February 2020.

The tenant complied with the landlord's request, and moved out despite the inconvenience and hardship it caused her and her family. The tenant believed that the landlord had ulterior motives in ending the tenancy after the landlord had requested that she pay for utilities when the utilities were originally included in the monthly rent, but moved out as requested. The tenant is requesting compensation for the landlord's failure to move into the home after discovering that the landlord had attempted to re-rent the home for substantially more rent. The tenant provided copies of an online advertisement which shows the home listed for substantially more rent.

Counsel for the landlord confirmed that the landlord remains in Singapore, and have not moved into the home. The landlord cited extenuating circumstances as the reason why they have not moved in. The landlord provided documents to support that the landlord had cancelled their flight on March 16, 2020, as allowed by the airline, after an announcement about travel restrictions that were going to be imposed due to the pandemic. Counsel for the landlord submitted that the landlord and her partner were in their 60s, and were therefore in a high risk age group if they were to contract the virus. Counsel submitted that the landlord had attempted to re-rent the home to mitigate their losses. Counsel confirmed that the home remains vacant while the landlord assesses the situation and how to proceed considering the circumstances.

Analysis

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice 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) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the landlord had communicated to the tenant that they required the home for their own personal use, I find the landlord did not end the tenancy by way of a Notice to End Tenancy that complies with section 52(e) of the *Act*. The tenant applied for compensation pursuant to section 51 below, which requires that a notice be given under section 49 of the *Act*.

Tenant's compensation: section 49 notice

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...

(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 find that the tenant moved out at the end of fixed-term tenancy as requested by the landlord and not as a result of receiving a 2 Month Notice pursuant to Section 49 of the *Act*. I find that the notice given to the tenant does not comply with section 52 of the *Act*, and the tenant moved out without applying to dispute this notice. On this basis, I am not allowing the tenant's application for monetary compensation pursuant to section 51 of the *Act* as the tenant moved out as requested by the landlord, and not on the basis of a Notice given under section 49 of the *Act*.

As the filing fee is normally rewarded to the successful party after a hearing, I dismiss the tenant's application to recover the filing fee.

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 13, 2020

Residential Tenancy Branch