



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenants applied for a monetary order in the amount of \$13,100.00, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants, the landlord, an agent for the landlord JB (agent) and the spouse of the landlord PB (spouse) attended the teleconference hearing. All participants were affirmed, the hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision.

Neither party raised any concerns regarding the service of documentary evidence. Based on the above, I find the parties were sufficiently served according to the Act.

Preliminary and Procedural Matter

The parties confirmed the email addresses during the hearing. The parties were advised that the decision would be emailed to the parties. Any resulting monetary order will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Are the tenants entitled to one month rent as compensation pursuant to section 51(1) of the Act?
- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The parties agreed that there was no written tenancy agreement, which I will deal with later in this decision. The parties agreed that a verbal tenancy was formed and began on June 1, 2012. The parties agreed that the monthly rent was \$1,000.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$375.00, which the parties stated was already returned to the tenants by the landlord.

There is no dispute that the landlord served a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit dated February 20, 2020 (4 Month Notice). The reason stated on the 4 Month Notice is:

“I am ending your tenancy because I am going to convert the residential property into a not for profit housing cooperative under the Cooperative Association Act.”

The landlords indicated that no permits and approvals are required by law to do this work on the 4 Month Notice. The effective vacancy date listed on the 4 Month Notice was June 1, 2020. The tenants provided no evidence that they wrote to the landlords to give them 10 days' notice that they would be vacating the rental unit early. The tenants did not dispute the 4 Month Notice and vacated March 3, 2020, however, I will deal with the tenants vacating early later in this decision. The landlord testified that the tenants did not give the landlord a written 10-day notice that they would be vacating the rental unit early.

The agent stated that the landlord used the incorrect form for the 4 Month Notice and that the landlord wanted their grandmother to move into the rental unit; however, the landlord's plans changed and the rental unit was re-rented for April 1, 2020. The agent confirmed that the tenants were not provided any opportunity to move back into the rental unit after they vacated the rental unit and before the landlord listed to property for re-rental.

The tenants are seeking compensation of \$13,100.00 as follows:

1. Equivalent of one month rent for being served with the 4 Month Notice of \$1000.00
2. 12 months of compensation pursuant to section 51(2) of the Act of \$12,000.00
3. Filing fee of \$100.00

The tenants claim that they were evicted for a renovation of the rental unit by the landlord.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, as the landlord failed to have a written tenancy agreement, section 13(1) of the Act applies and states:

Requirements for tenancy agreements

13(1)A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Therefore, **I caution** the landlords to comply with section 13(1) of the Act in the future and ensure that any future tenancy agreements be in writing as required by the Act.

One month of compensation – Section 50 of the Act applies and states:

Tenant may end tenancy early following notice under certain sections

50(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], **the tenant may end the tenancy early by**

(a)giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
[Emphasis added]

Based on the above, I find the tenants failed to serve their 10 day's written notice on the landlords and as a result, I find the tenancy ended on the effective date listed on the 4 Month Notice, which would automatically correct under section 53 of the Act to June 30, 2020. Therefore, I dismiss the tenants' claim for compensation for one month of rent as I find the tenants did not pay rent for June 2020, so have already been compensated by the landlords. Further, I find that the tenants failed to comply with section 50(1) to end the tenancy earlier than June 30, 2020, the corrected effective vacancy date listed on the 4 Month Notice, which the tenants did not dispute. Given the above, I find the tenant's failed to meet the burden of proof under the Act for this item, which is dismissed without leave to reapply, due to insufficient evidence.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

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.

[Emphasis added]

Based on the evidence before me, I find the tenants have met the burden of proof as while the landlord may have used the incorrect form, I find that doing so is not the fault of the tenants and that it is the sole responsibility of the landlord. In addition, the landlord confirmed that they re-rented the rental unit effective April 1, 2020, which is before the effective vacancy date listed on the 4 Month Notice.

Therefore, I find that the landlord failed to comply with the reason stated on the 4 Month Notice as served on the tenants and that the landlord must pay the tenants as a result under the Act. Consequently, I find the landlord must pay the tenants **\$12,000.00** in compensation, comprised of twelve times the monthly rent of \$1,000.00 pursuant to section 51(2) of the Act.

As the tenants' application was largely successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$12,100.00** comprised of \$12,000.00, which is 12 times \$1,000.00 monthly rent, plus the \$100.00 filing fee. Pursuant to section 67 of the Act, I grant the tenants a monetary order in the amount of **\$12,100.00**.

I caution the landlord to comply with the reason stated in a 4 Month Notice in the future, to avoid a similar penalty under the Act.

Conclusion

The tenants' application is mostly successful.

The landlord has been cautioned as noted above.

I find the landlord failed to use the rental unit for the stated purpose and instead, re-rented the rental unit as of April 1, 2020, which is before the 4 Month Notice corrected effective vacancy date of June 30, 2020.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$12,100.00 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlords are cautioned that costs of such enforcement may be recoverable from the landlords.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2020

Residential Tenancy Branch