



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for compensation under section 51(2) of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. The landlord was represented by advocate JW (the landlord). Witness for the tenant MF also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to:

01. a monetary award for compensation under section 51(2) of the act?
02. an authorization to recover the filing fee for this application?

Background and Evidence

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

rule 7.4 to the parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on May 01, 2002, the respondent landlord purchased the rental unit in July 2017, and the tenancy ended on March 31, 2018. Monthly rent at the end of the tenancy was \$840.00, due on the first day of the month. The landlord returned the security deposit of \$350.00 to the tenant. The tenancy agreement was submitted into evidence.

Both parties agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served on November 04, 2017. A copy of the Notice was submitted into evidence. It states the rental unit will be occupied by the landlord or the landlord's close family member. The effective date of the Notice was January 31, 2018. The landlord authorized the tenant to move out on March 31, 2018.

Both parties also agreed the rental unit is an eight-unit complex and all the units belong to the same landlord.

The tenant confirmed that on April 01, 2018, when the move-out inspection happened, the landlord had not moved in to the rental unit. A few days later the tenant returned to the rental unit to tidy up some garbage outside the building and he noticed the landlord was renovating the rental unit.

The landlord explained she moved to the rental unit on April 01, 2018 with her husband and they did minor renovations in the rental unit, as it was in poor conditions when they moved in. The bathroom and kitchen were upgraded and the rental unit was painted. Both of the landlord and her husband lived in the rental unit during the minor renovations.

The tenant said other tenants in the rental unit informed him that the landlord was not accessing the rental unit on a regular basis and the rental unit was re-rented to a non-family related tenant less than 5 months after the tenant moved out. The tenant noted that after his tenancy ended the landlord terminated the tenancy of 6 other rental units in the 8-unit rental building and renovated the units to re-rent them at a higher price. The tenant stated the landlord owns another residential property in the same city and she never moved to the rental unit.

The landlord acknowledged that both her and her husband left Canada in the last week of August 2018 to pursue medical treatment overseas, as they are dual citizens. Both

the landlord and her husband preferred to be treated by their family doctor who had been treating them for a long time and has their extensive medical records overseas, hence their move away from Canada.

The landlord confirmed the tenant's rental unit was re-rented on September 01, 2018. A tenancy agreement signed on August 27, 2018 was submitted into evidence.

The tenant submitted into evidence a monetary order worksheet indicating a total amount of \$10,080.00 (12 months at \$840.00).

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Sections 49(2) and (3) of the Act, effective until May 16, 2018, state:

- (2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (a) not earlier than 2 months after the date the tenant receives the notice,
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the Act, effective until May 16, 2018, provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is equivalent of double 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 note that section 51(3) of the Act came into effect on May 17, 2018.

Based on the landlord's undisputed testimony, I find the landlord did not live in the rental unit for at least six months from the end of the tenancy, thus failing to discharge their burden pursuant to section 51(2)(b) of the Act. As such, pursuant to section 51(2) of the Act, effective until May 16, 2018, I grant the tenant a monetary compensation in the amount of double the monthly rent payable. Thus, the tenant is entitled to a monetary compensation in the amount of \$1,680.00 (2 x \$840.00).

As the tenant was partially successful in his application, I award the tenant the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Section 51(2) effective until May 16, 2018 - doubling of \$840.00 monthly rent	1,680.00
Section 72 - Reimbursement of filing fee	100.00
TOTAL	1,780.00

Conclusion

Pursuant to sections 51(2) effective until May 16, 2018 and 72 of the Act, I grant the tenant a monetary order in the amount of \$1,780.00.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

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: August 04, 2020

Residential Tenancy Branch