



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 tenants' 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.

The landlord and the two tenants, male tenant ("tenant") and "female tenant," 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 49 minutes.

The landlord intended to call his brother as a witness, who was excluded from the outset of the hearing. I informed the landlord that it was up to him to recall his witness when he wanted to present witness testimony. The landlord did not recall his witness, despite being asked by me, multiple times during the hearing, whether he had any further evidence to present.

I explained the hearing process to both parties at the outset of the hearing. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing.

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

The landlord confirmed that he did not submit any documentary or digital evidence for this hearing.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 31, 2018 ("2 Month Notice") on the same date by way of email. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 2 Month Notice on October 31, 2018.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

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 tenants' claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on April 1, 2014 and ended on December 31, 2018. Monthly rent of \$1,350.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants and the landlord's parents used it towards rent during the tenancy. A written tenancy agreement was signed by both parties.

The landlord was unsure about the above information, stating that his parents were the owners of the rental unit, until he gained ownership in mid-2015, when he took over as the landlord for the tenants' tenancy.

Both parties agreed that the rental unit is a separate laneway house. The landlord stated that he and his parents occupy the upper floor of a separate main house.

Both parties agreed to the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on notice was December 31, 2018. The reason indicated on the 2 Month Notice was:

- *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 tenants seek compensation under section 51(2) of the Act for twelve months of rent reimbursement of \$1,350.00, totaling \$16,200.00. The tenants claim that because the landlord did not use the rental unit for the purpose on the 2 Month Notice, they are entitled to compensation. The landlord disputes the tenants' application.

The tenant testified regarding the following facts. The tenants moved out of the rental unit pursuant to the 2 Month Notice. The landlord did not issue the notice in good faith, as he was trying to get the tenants to pay a higher rent per month, as compared to neighbouring properties. The tenants were told by the landlord that his sister was moving in and the first 2 Month Notice, dated October 23, 2018, was provided to the tenants. After the tenants told the landlord that a sister was not a valid family member, according to the notice, the landlord issued the second 2 Month Notice, dated October 31, 2018, stating that he spoke to his lawyer and his parents would be moving in. When the tenants moved out and completed the move-out condition inspection with the landlord's father on January 2, 2019, the landlord's father said he did not know who was moving into the rental unit and he did not know whether he would be moving in, as he may do so later. Neither the landlord, nor the landlord's parents moved into the rental unit after the tenants vacated. The tenants visited the rental unit in October 2019 and a man with his child, unrelated to the landlord, answered the door and was living there. At the same time in October 2019, the landlord's father answered the door at the upper level of the main house, where the landlord's parents were always living. A neighbour occupant living on the lower level of the main house told the tenant that the rental unit was being used for Airbnb, when the tenant asked him in October 2019.

The landlord testified regarding the following facts. Neither the landlord, nor his parents, nor his sister moved into the rental unit after the tenants moved out. The landlord lives with his parents on the upper floor of the main house. The landlord completed repairs and painting in the rental unit for about two months after the tenants vacated, because they caused a lot of damage. The landlord's sister was supposed to move into the rental unit, but she decided to stay at her own place, out of town. It was too late to tell the tenants to come back or to change the 2 Month Notice. The landlord's family friends stayed in the rental unit, rent-free, for about one to two months, after the repairs were completed. In June 2019, the landlord's friend approached him asking to rent the rental unit. The landlord re-rented the unit to this friend at a rent of \$1,000.00 per month, as of June 2019, and she still lives there. His friend uses the

rental unit for Airbnb rentals and the landlord is agreeable to that. The landlord has a mutual agreement with his friend to use the rental unit for his own purpose to allow his international work clients to stay there if they need to do so.

Analysis

Section 51(2) of the Act establishes a provision whereby tenants are 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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit 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 tenants vacated the rental unit on December 31, 2018, pursuant to the 2 Month Notice. It is undisputed that neither the landlord, nor his parents, moved into the rental unit, as they live in a separate main house property. Accordingly, I find that neither the landlord, nor a close family member of the landlord (parent, spouse or child or parent or child of that individual's spouse), moved into the rental unit after the tenants vacated on December 31, 2018, as required by the 2 Month Notice.

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

I find that the landlord failed to show extenuating circumstances prevented him from using the rental unit for the purpose in the 2 Month Notice.

The landlord issued the 2 Month Notice for his sister to move into the rental unit. Regardless of why the landlord's sister could not move into the rental unit, she does not qualify as a close family member according to the notice. This information is contained in the notice itself, the landlord was told this information by the tenants, and the landlord apparently spoke to a lawyer about it. The landlord then issued a new 2 Month Notice for his parents to move in, but they did not do so.

The landlord completed repairs for two months, had family friends reside in the rental unit for one to two months, and then re-rented the unit to his friend sometime in June 2019, at a rent of \$1,000.00. The landlord's friend continues to rent the unit and also uses it for Airbnb purposes. Regardless of whether or not the landlord has his international work clients stay there, this does not fulfill the requirement of the 2 Month Notice. None of the above people qualify as the landlord or the landlord's close family members.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as the landlord or his close family members did not occupy the rental unit for at least six months after the tenants vacated on December 31, 2018. I find that the landlord failed to show extenuating circumstances prevented him from doing so.

Accordingly, I find that the tenants are entitled to twelve times the monthly rent of \$1,350.00, as compensation under section 51 of the *Act*, which totals \$16,200.00, from the landlord.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$16,300.00, against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 17, 2020

Residential Tenancy Branch