



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

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.

The "male tenant" did not attend this hearing, which lasted approximately 54 minutes. The female tenant ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that she had permission to represent the male tenant at this hearing (collectively "tenants").

The landlord confirmed receipt of the tenants' 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 tenants' application and the tenants were duly served with the landlord's evidence.

Both parties confirmed that they had no objections and they were ready to proceed with this hearing.

The tenant confirmed receipt of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated November 12, 2019 ("2 Month Notice"). A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the notice is January 31, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's 2 Month Notice.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to the documentary evidence and 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.

Both parties agreed to the following facts. This tenancy began with the former landlord on May 1, 2016, pursuant to a signed written tenancy agreement. The landlord purchased the rental unit in October 2019 and continued the tenants' tenancy. Monthly rent in the amount of \$900.00 was payable to the landlord on the first day of each month. A security deposit of \$450.00 was paid by the tenants and the landlord continues to retain this deposit, as per the agreement by the tenants. The rental unit is a basement suite of a house, where there is a separate upper level unit.

The tenant seeks a monetary order of \$10,800.00. The landlord disputes the tenants' application.

The tenant seeks compensation under section 51(2) of the *Act* for twelve months of rent reimbursement of \$900.00, totaling \$10,800.00. 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.

Both parties agreed that 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 tenant stated the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice. The landlord did not issue that notice in good faith. The landlord did not move into the rental unit after the tenants vacated on January 31, 2020. Rent was not paid to the landlord for December 2019 or January 2020. The tenants received a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") from the landlord for non-payment of rent.

The landlord stated the following facts. The tenants were evicted for non-payment of rent pursuant to the 10 Day Notice, which makes the 2 Month Notice no longer effective, meaning the landlord can use the rental unit for any purpose he wants after the tenants vacate. The 10 Day Notice was issued to the tenants on January 20, 2020 and was effective on the same date as the 2 Month Notice, which is January 31, 2020. The landlord timed the 10 Day Notice's effective date to coincide with the effective date of the 2 Month Notice. The tenants agreed that they received the 10 Day Notice, they did not dispute it, and they did not pay rent to the landlord for December 2019 or January 2020. The tenants were only entitled to one-month free rent compensation pursuant to the 2 Month Notice, not two months.

The landlord confirmed the following facts. When the landlord took possession of the rental unit on February 1, 2020, it was "uninhabitable and disgusting" and a lot of cleaning and repairs had to be done. The landlord, his fiancé, and fiancé's brother all cleaned and repaired the rental unit, to ensure the landlord and his fiancé could move in on April 1, 2020. On March 15, 2020, the landlord's other tenant, living in the upstairs level of the same house ("upstairs occupant"), gave notice to the landlord that he had to move out because of the covid-19 pandemic. The landlord agreed that the upstairs occupant could vacate on March 31, 2020. Because the upstairs unit is a bigger unit, was rented at a higher amount of \$1,500.00 per month, and the rental market was bad because of covid-19, the landlord and his fiancé decided to move into the upstairs unit instead of the basement rental unit. The landlord wanted to mitigate his financial losses and re-rented the basement suite to new occupants for \$1,000.00 per month as of April 1, 2020 to present.

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 or purchaser 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 make the following findings on a balance of probabilities. The tenants vacated the rental unit on January 31, 2020, pursuant to the 2 Month Notice, which was issued by the landlord for him or a close family member to move into the rental unit.

Although the landlord issued a 10 Day Notice to the tenants on January 20, 2020, effective on January 31, 2020, this was after the 2 Month Notice had already been issued first in November 2019. Therefore, I find that the 2 Month Notice was still fully effective and was not cancelled by the issuance of the 10 Day Notice later.

The landlord agreed that he did not move into the rental unit, as intended. He agreed that he re-rented the unit as of April 1, 2020 for a rent of \$1,000.00 per month, where the new occupants still reside.

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 showed extenuating circumstances prevented him from using the rental unit for the purpose in the 2 Month Notice. I accept the landlord's affirmed testimony that his upstairs occupant suddenly vacated the rental unit on March 31, 2020, due to the COVID-19 pandemic, after giving notice to the landlord only two weeks earlier on March 15, 2020.

I find that the landlord could not have known at the time he purchased the rental unit, took possession of it, issued the 2 Month Notice to the tenants, or when the tenants vacated on January 31, 2020, that the COVID-19 pandemic would occur, or that he would lose his upstairs occupant's tenancy. I find that the landlord attempted to mitigate his losses and move into the upstairs unit, which is a bigger unit where he was obtaining a higher rent of \$1,500.00 per month, since it was difficult to rent in the market during the covid-19 pandemic. The landlord was able to re-rent the smaller and cheaper basement unit instead, to new occupants.

Accordingly, I find that the tenants are not entitled to twelve times the monthly rent of \$900.00, totalling \$10,800.00, from the landlord. Therefore, the tenants' application is dismissed without leave to reapply.

Conclusion

The tenants' 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: September 03, 2020

Residential Tenancy Branch