



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF

Introduction

On August 3, 2020, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and for the return of personal property.

The matter was scheduled as a teleconference hearing. The Tenant and the Landlord attended the hearing. The Landlord was assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They provided affirmed oral testimony and were given an opportunity to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. An Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the Tenant is entitled to compensation due to the Landlord breaching the Act. The Tenants other claims are dismissed with leave to reapply.

The Tenant testified that he never received disclosure of the Landlord's documentary evidence.

The Landlord testified that they attempted to serve the evidence using a process server; however, this was unsuccessful, so the evidence was left at po box 187 on September 3, 2020.

In reply, the Tenant testified that he has that po box, but he did not receive the Landlord's documents.

I note that the Rules of Procedure for these hearings require that a respondent to a hearing provide their documentary evidence to the applicant at least 7 days prior to a hearing. Service of documents by mail is deemed to be delivered 5 days after it is mailed. I find that the evidence was not served in time and in accordance with the Rules of Procedure and nevertheless the Tenant has not received the evidence.

The Landlord's documentary evidence was not accepted or considered.

Issue to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss?

Background and Evidence

The Landlord and Tenant testified that the tenancy began back in 2012 or 2013. The Tenant was renting a manufactured home on a month to month basis. Rent in the amount of \$800.00 was due to be paid to the Landlord each month.

The Tenant testified that he moved out of the rental unit on April 30, 2019 after he received a Two Month Notice to End Tenancy for Landlord Use of Property dated February 27, 2019 ("the Two Month Notice"). The Tenant provided a copy of the Two Month Notice. The Landlord testified that the Tenants moved out of the rental unit on May 15, 2019.

The reason cited for ending the tenancy within the Two Month Notice is:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord in writing to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Tenant testified that he accepted the Two Month Notice and moved out of the rental unit. He submitted that he is entitled to compensation of 12 months rent payable under the tenancy agreement because the Landlord did not accomplish the stated purpose of the Notice and the conditions for sale were not satisfied.

The Tenant testified that the Landlord had a friend move into the rental unit shortly after he vacated.

The Tenant is seeking compensation of \$9,600.00 which is twelve months of the rent payable under the tenancy agreement.

The Tenant submitted that the purchasers have provided a signed a letter stating that they never asked the Landlord to issue the Tenant a Two Month Notice to End Tenancy.

In reply, the Landlords counsel submitted that there are extenuating circumstances present.

Counsel submitted that the contract has a condition of sale that the purchaser will have vacant occupation of the residential property on May 1, 2019.

Counsel submitted that the co-owner of the property Mr. R.T. filed a certificate of pending litigation against the property on April 26, 2019. Counsel submitted that Mr. R.T. then approached the Tenants advising them to not move out of the rental unit. Counsel submitted that the actions of Mr. R.T. delayed the date the rental unit was vacated, and the sale did not complete.

Counsel submitted that purchasers backed out of the sale because they did not have vacant possession by May 1, 2019 as provided in the contract of sale.

Counsel submitted that it is not reasonable to have the Landlord pay compensation to the Tenant. Counsel submitted that the Landlord intended in good faith to sell the rental unit. The Landlord testified that Mr. R.T. had also signed the sale agreement.

Counsel submitted that the letter from the purchasers does not refute that they wanted vacant possession and that it is a retroactive attempt to point out that a separate letter was not given asking for vacant possession

In reply, the Tenant R.L. testified that the Landlords Ms. P.S. and Mr. R.T. separated in October 2018.

Mr. R.T. testified that he did not agree about the sale of the property. He testified that he only signed the sale agreement for insurance purposes.

Analysis

Section 51 (2) of the Act provides:

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.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy provides the following information on extenuating circumstances:

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.

The Guideline provides 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 Guideline provides that 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

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenant received and accepted a Two Month Notice from the Landlord and moved out of the rental unit. I find that the effective date of the Two Month Notice is April 30, 2019, and the Tenant was required to vacate the unit on that date.

I accept the testimony before me that the male Landlord /co owner of the property attended the rental unit and advised the Tenant to not move out of the rental unit on April 30, 2019. I accept the testimony before me that the purchasers backed out of the sale agreement when they did not get vacant possession of the rental unit on May 1, 2019 and I find that it is more likely than not that the Tenant actually moved out of the rental unit on May 15, 2019.

I have considered whether the Tenant is partially responsible for the sale not completing due to overholding the rental unit. I find that the Tenant took direction from Mr. R.T. who was the co-owner / Landlord of the property. I find that it is reasonable that the Tenant followed the direction/ offer of the Landlord permitting him to stay in the unit longer. I find that the Tenant is not responsible for the sale not completing.

I find that the purchasers are not responsible to pay compensation to the Tenant because a condition of sale; vacant occupation was not provided, and the sale agreement never completed.

I find the Landlord failed to use the rental property for the reason stated within the Two Month Notice for a six-month duration. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered counsel's submissions regarding extenuating circumstances. I find that there is insufficient evidence from the Landlord to support that there are extenuating circumstances present making it unjust for the Landlord to have to pay compensation.

I find that the reason the sale did not complete was entirely due to disagreement by the owners and the resulting actions by Mr. R.T. to prevent the sale from completing. I find it would not be reasonable to be permitted to manufacture your own extenuating circumstances and be excused from paying compensation.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$9,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

I find the Landlord failed to use the rental property for the reason stated within the Two Month Notice for a six-month duration. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I grant the Tenant a monetary order in the amount of \$9,700.00.

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 23, 2020

Residential Tenancy Branch