



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 tenant's 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 "female landlord" did not attend this hearing, which lasted approximately 30 minutes. The male landlord ("landlord"), the landlords' lawyer, and the 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. The landlord confirmed that his lawyer had permission to represent the landlords at this hearing.

The landlords' lawyer confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence.

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

The tenant confirmed receipt of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 15, 2019 ("2 Month Notice"). A partial copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the notice is October 31, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice.

Issues to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlords?

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 tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2017 and ended on September 17, 2019. Monthly rent of \$1,000.00 was payable on the first day of each month. No written tenancy agreement was signed by the parties. The rental unit is the basement suite of a house with three bedrooms and one bathroom. There is a separate upper level of the same house, with two bedrooms and one bathroom at about 2,000 square feet, where the female landlord has been living since 1994.

The tenant seeks a monetary order of \$12,000.00 plus the \$100.00 filing fee. The landlords dispute the tenant's application.

The tenant seeks compensation under section 51(2) of the *Act* for twelve months of rent reimbursement of \$1,000.00, totaling \$12,000.00. The tenant claims that because the landlords did not use the rental unit for the purpose on the 2 Month Notice, he is 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. He vacated the rental unit, pursuant to the 2 Month Notice. The landlord or a close family member did not move into the rental unit after he moved out. The tenant lives about one block away from the rental property and has driven by regularly and did not see anyone living at the rental unit, since no one moved in. The tenant disputes the documentary evidence submitted by the landlords,

indicating that they made up information in their affidavits and the letter from the landlords' neighbour does not have any dates as to when the landlord's daughter moved in or out.

The landlord stated the following facts. The landlord's daughter moved into the rental unit from November 1, 2019 to mid-March 2020, to assist the female landlord, who lives in the upper level of the same property. The landlord's daughter had to move out due to the covid-19 pandemic, because the female landlord is part of an at-risk elderly population. The landlord's daughter intends to move back into the rental unit after the covid-19 pandemic.

The landlords provided two sworn affidavits, both dated August 20, 2020, from the female landlord and the landlord's daughter, confirming the above information. The landlords also provided a letter, dated September 4, 2020, from the landlords' neighbour who claimed that he saw the landlord's daughter coming in and out of the rental unit and is aware that she moved in.

Analysis

Section 51(2) of the *Act* establishes a provision whereby a tenant is 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.

I make the following findings on a balance of probabilities. The tenant vacated the rental unit on September 17, 2019, pursuant to the 2 Month Notice, which was issued by the landlords for them or a close family member to move into the rental unit.

I find that the landlord's daughter moved into the rental unit from November 1, 2019 to mid-May 2020, a period of approximately 4.5 months, in order to assist the female landlord. I find that the landlord's daughter moved in within a reasonable period of time after the tenant vacated on September 17, 2019.

I accept the affirmed testimony of the landlord, and the two sworn affidavits of the landlord's daughter and the female landlord, confirming the above information. With her affidavit, the female landlord provided a medical note, dated September 12, 2019, from her doctor, indicating that she would benefit from a family member moving in to assist her.

I do not find that the tenant driving by at different times and not seeing anyone at the rental unit demonstrate that no one moved into the rental unit.

Section 51(3) of the *Act* states the following regarding extenuating circumstances:

51 (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 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 landlords showed extenuating circumstances prevented them from using the rental unit for the purpose in the 2 Month Notice for the entire six-month period. The landlord's daughter only resided in the rental unit for approximately 4.5 months. I accept the landlord's affirmed testimony that his daughter had to move out of the rental unit in mid-May 2020, due to the COVID-19 pandemic. I accept the two sworn affidavits from the landlord's daughter and the female landlord, which indicate that the landlord's daughter had to leave the rental unit in mid-May 2020, due to the covid-19 pandemic because the female landlord is a vulnerable and elderly at-risk person for covid-19, as she is 88 years old.

I find that the landlords could not have known at the time they issued the 2 Month Notice to the tenant in August 2019, when the tenant vacated in September 2019, or when the landlord's daughter moved into the rental unit in November 2019, that the covid-19 pandemic would occur. The covid-19 pandemic is outside the control of both parties.

Accordingly, I find that the tenant is not entitled to twelve times the monthly rent of \$1,000.00, totalling \$12,000.00, from the landlords, and this application is dismissed without leave to reapply. As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenant's entire 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 17, 2020

Residential Tenancy Branch