



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for money owed or compensation for damage or loss, and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at 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.

Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss, pursuant to section 51 of the *Act*?
- Is the Tenant entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on June 1, 2018. Rent in the amount of \$1,440.00 was to be paid by the first day of each month, and at the outset of

the tenancy, the Tenant paid a \$660.00 security deposit. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

All parties agreed that the Landlord served the Tenant a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") dated March 29, 2019. The Notice indicated that the Tenant was required to vacate the rental unit as of May 31, 2019. The reason checked off by the Landlords within the Notice was as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, child of that individual's spouse).*

Both parties agreed that the Tenant moved out of the rental unit, in accordance with the Notice on May 30, 2019. The Tenant submitted a copy of the Notice into documentary evidence.

The Tenants testified that they found out that the Landlord's family member had not moved in as indicated on the Notice, and that the rental property had rented. The Tenant is requesting compensation for the rental property not being used as indicated on the Notice.

The Landlords testified that when they finally got into the rental unit on June 1, 2019, they found a major water leak. The Landlord testified that the water leak had been caused by someone cutting the pipe under the sink in the bathroom. The Landlord testified that it had taken six months and \$34,000.00 to repair the rental unit due to the extensive water damage. The Landlord submitted five witness statements into documentary evidence.

The Landlord agreed that their daughter had not moved in but that it was due to the extensive damage to the rental unit that had been caused by the Tenant when they left. The Landlord testified that she had to find alternative housing for her daughter until the repairs were finished.

The Landlord testified that the repairs were completed at the end of December 2020 and that by that time, her daughter had been settled into another location and had decided not to move into the rental unit.

The Landlord testified that they had started advertising the rental unit in March of 2020 and secured a new renter as of April 1, 2020.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51(2) of the Act, which states the following:

Tenant's compensation: section 49 notice

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 accept the agreed-upon testimony of these parties that the Landlord served the Notice to end the tenancy in compliance with sections 49(3), and that the Notice had an effective date of May 30, 2019. I also accept the testimony of the Tenant that they had moved out of the rental unit in accordance with the Notice on May 30, 2019.

In this case, the Tenant has claimed for the additional 12-months of compensation, claiming that the Landlord did not use the rental unit for the stated purpose on the notice.

I accept the Landlord's testimony that the Landlord did not use the rental unit for the stated purpose on the Notice and did re-rent the rental unit as of April 1, 2020. However, I also accept the testimony of the Landlord that they had planned to move their daughter into the rental unit but that due to extensive water damage caused to the rental unit, their daughter was unable to move in.

Section 51 (3) of the Act states the following:

Tenant's compensation: section 49 notice

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.*

I find that the extensive water damage caused to this rental unit was an extenuating circumstance that was out of the control of the Landlord. Accordingly, I find that it is appropriate to excuse this Landlord from having to pay the amount required under section 51 (2) of the *Act*, and I dismiss the Tenant's application for this compensation.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the filing fee paid for this application.

Conclusion

I dismiss the Tenant's application for compensation pursuant to section 51(2) of the *Act* 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 24, 2020

Residential Tenancy Branch