



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 a tenant's application for compensation payable where a landlord does not use the rental unit for the purpose stated on the Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), as provided under section 51(2) of the Act.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed that the parties had exchanged their respective hearing materials and I admitted them into evidence for consideration in making this decision.

The parties were affirmed and the hearing process was explained to the parties. The parties were also given the opportunity to ask questions about the dispute resolution process.

Issue(s) to be Decided

Are the tenants entitled to compensation payable under section 51(2) of the Act?

Background and Evidence

The tenancy started on September 1, 2018 for a six month fixed term. Upon expiry of the fixed term the tenancy continued on a month to month basis. The tenants paid a security deposit of \$1200.00 and were required to pay rent of \$1200.00 on the first day of every month.

On June 30, 2019 the landlord gave the tenants all three pages of a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice"), in the approved form, with a stated effective date of August 30, 2019. The second page of the 2 Month Notice, where the landlord is to tick one of the available reasons for ending the tenancy, none of the boxes were ticked by the landlord.

The tenants did not file to dispute the 2 Month Notice and vacated the rental unit on August 25, 2019.

Shortly after the tenancy ended the tenants found an advertisement on the internet advertising the rental unit as being available for rent. In January 2020 the tenants met one of the new tenants because the children of the tenants and the new tenants attend the same school. The landlord confirmed that he re-rented the rental unit starting November 1, 2019.

Tenants' position

The tenant testified that upon receiving the 2 Month Notice she pointed out to the landlord that there was no box ticked on the second page of the 2 Month Notice. According to the tenant the landlord explained that he had not yet decided whether he would be selling the house and moving back to Korea or having his son move from Korea to live with him.

The tenants testified that they did not want to move from the rental unit as their child was attending school in the area and the rental unit was in a convenient location.

After receiving the 2 Month Notice the landlord repeatedly asked the tenants to move out early, which they tried to do and is the reason the tenants moved out on August 25, 2019.

Landlord's position

The landlord submitted that in June 2019 he returned home from a trip to Korea and he found the male tenant and the tenants' children had moved out and it was only the female tenant living in the rental unit. The tenant informed the landlord that the tenants were divorcing but a few days later she told him they were reconciling and they were going to move to a bigger living accommodation.

According to the landlord, the tenant asked the landlord to compensate them for moving out. Initially, the tenant demanded compensation equivalent to 12 months' of rent, then six months, then three. The landlord submitted that he was not agreeable to paying the tenant any compensation; however, he was uncertain of the tenancy laws so he contacted his realtor and his realtor suggested he propose to the tenants two months to move out and one free month of rent as a settlement. The landlord's realtor suggested the landlord give the tenants a 2 Month Notice as there was no particular form to use to reflect this arrangement and the realtor gave the landlord a blank 2 Month Notice that the landlord filled out and gave to the tenants.

The landlord's lawyer argued that the landlord was relaying upon his realtor for information concerning tenancy law and that the two months of notice and one month of free rent represents a negotiated settlement the landlord entered into with the tenants due to the landlord being unfamiliar with tenancy law. The landlord's lawyer also argued that the tenants could have disputed the 2 Month Notice and the tenants would have likely succeeded because there was no stated reason indicated on the 2 Month Notice. Further, the absence of a stated reason on the 2 Month Notice means the landlord cannot be found to be in violation of a stated reason and the tenant's claim must fail.

The landlord testified that he never told the tenants that he or his wife or his son would be moving into the rental unit.

The tenants responded acknowledging that the male tenant and their children were living with his mother temporarily but that they did not have plans to end the tenancy or move out of the rental unit. The tenants denied asking the landlord for any compensation except after receiving the 2 Month Notice they asked for the one month's worth of rent.

Analysis

The tenants seek compensation equivalent to 12 months' of rent on the ground the landlord ended the tenancy with a 2 Month Notice to End Tenancy for Landlord's Use of Property and then re-rented the property shortly after the tenancy ended.

Section 49 of the Residential Tenancy Act (the Act) allows a landlord to end a tenancy for landlord's use of the property; however, the permissible uses are limited. Where a landlord ends a tenancy for landlord's use under section 49 of the Act, section 51 of the Act sets out compensation payable to the tenant.

Section 51(1) of the Act requires a landlord who gives notice to end a tenancy for landlord's use to pay compensation to the tenant for ending the tenancy equivalent to one month's rent. This compensation may be received by the tenant withholding rent for the last month of tenancy.

In addition to compensation payable under section 51(1), section 51(2) of the Act requires a landlord to compensate a tenant an additional amount of compensation equal to 12 months' rent payable if the landlord (or purchaser, if applicable) has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Compensation must be paid under section 51(2) unless the Director, as delegated to an Arbitrator, of the Residential Tenancy Branch opines that the landlord's failure to use the rental unit for the stated purpose was due to "extenuating circumstances".

In this case, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property in the approved form; however, the landlord took the position that he had not ended the tenancy for landlord's use of property. Rather, the landlord argued that he merely used the form to reflect a "negotiated settlement" with the tenants that was reached after the tenant demanded compensation from the landlord and there is no available form to reflect such agreements. The tenant denied demanding any compensation from the landlord except after the landlord served the tenants with the 2 Month Notice. Tenancies may pursuant to a negotiated agreement and the Act does contemplate such situations under section 44(1)(c) of the Act. Section 44(1)(c) provides that a tenancy ends when a landlord and tenant agree in writing to end the tenancy. The Residential Tenancy Branch provides a form available for parties to use to record a mutual agreement to end tenancy. The form is entitled: "Mutual Agreement to End a Tenancy" and this form is located on the same webpage as the 2 Month Notice that was used by the landlord.

I find the opposing testimony is insufficient to find the parties had reached a "negotiated settlement" or mutual agreement that involved ending the tenancy. Further, the documentation used to bring the tenancy to an end is inconsistent with a mutual agreement to end tenancy and is consistent with the landlord bringing the tenancy to an end for landlord's use of property.

As for the landlord's submission that he is unfamiliar with tenancy law and relied upon his realtor for advice, I find that submission unsubstantiated, irrelevant and inconsequential to the tenants. The landlord did not present his realtor to substantiate his position; however, even if the landlord chose to rely upon his realtor for tenancy law advice and the advice was incorrect or poor, the consequence of relying upon such advice is the landlord's to bear.

The landlord also submitted that it was the tenants that wanted to end the tenancy. The tenants denied that to be accurate and testified they did not want to end the tenancy but they moved out because the landlord wanted to end the tenancy. The Act provides that a landlord or a tenant may end a tenancy by giving the other party a written notice to end tenancy. Considering it was the landlord that served the tenants with a notice to end tenancy; the tenants never did serve the landlord with a notice to end tenancy; and, the tenants obtained the last month of tenancy free which is consistent with a landlord's notice to end tenancy for landlord's use of property, I find the tenancy ended pursuant to a landlord's notice to end tenancy and more specifically, a 2 Month Notice to End Tenancy for Landlord's Use of Property which is a notice provided under section 49 of the Act.

While the landlord's lawyer argued the 2 Month Notice served upon the tenants was defective because none of the boxes were ticked on the second page of the notice and the tenants would have likely succeeded in having the 2 Month Notice cancelled if they had filed to dispute it, if the tenant accepts and acts upon the landlord's notice to end tenancy, I find it unreasonable for the landlord to then point to his own failure, whether intended or not, to tick a box on the notice as a basis to avoid paying compensation provided under section 51 of the Act. It is important to keep in mind that notices to end tenancy have serious and significant ramifications for the party that issues the notice and the party that receives the notice and notices to end tenancy should not be given lightly and without due consideration to the ramifications of the notice.

In consideration that there is not a reason ticked on the second page of the 2 Month Notice, I note that page 3 of the 2 Month Notice provides for the available reasons a landlord may end the tenancy using a 2 Month Notice, as follows:

REQUIREMENTS FOR THIS NOTICE

A landlord may end a tenancy with two months' notice if the landlord or purchaser or close family member intends to occupy the rental unit, or if the tenant no longer qualifies for a subsidized rental unit.

I find it reasonable that in recognition of the absence of a box being ticked on the second page of the 2 Month Notice, the landlord could avoid paying the compensation under section 51(2) if the landlord or purchaser or close family member had occupied by the rental unit within a reasonable amount of time after the tenancy ended and for at least six months. However, the landlord in this case clearly failed to use the rental unit for any of these available reasons since he re-rented the rental unit shortly after the tenancy ended, on November 1, 2019.

The landlord did not present any “extenuating circumstances” that prevented him from occupying the rental unit for himself, his spouse or close family member.

In light of all of the above, I find the tenants entitled to the additional compensation provided under section 51(2) of the Act, and I award the tenants \$14,400.00 as requested [calculated as \$1200.00 x 12 months].

The tenants did not request recovery of the filing fee and I make no award for such.

In keeping with the above, I provide the tenants with a Monetary Order in the sum of \$14400.00 to serve and enforce upon the landlord.

Conclusion

The tenants are provided a Monetary Order in the sum of \$14400.00 to serve and enforce upon the landlord.

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: December 2, 2020

Residential Tenancy Branch