



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 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.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness TR" testified at this hearing on behalf of the landlord and both parties had equal opportunities to question the witness. The witness was excluded from the outset of the hearing and was recalled later to testify. This hearing lasted approximately 37 minutes.

The hearing began at 1:30 p.m. and ended at 2:07 p.m. The tenant disconnected from the hearing at 1:56 p.m. and returned at 1:57 p.m., stating that he lost phone connection. I informed the tenant that I did not discuss any evidence with the landlord in his absence.

The landlord testified that he was one of the four owners of the rental unit. He stated that he co-owned the rental unit with his brother and his two grandparents. He said that the rental unit was owned by a legal family trust and that the above four individuals all owned voting shares in the trust.

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

The landlord stated that he did not submit any documentary evidence for this hearing.

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

Issue to be Decided

Is the tenant 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 tenant's documentary evidence and the 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 October 1, 2018. No written tenancy agreement was signed, only a verbal agreement was reached. Monthly rent of \$900.00 was payable on the first day of each month. No security deposit was paid for this tenancy.

The tenant claimed that his tenancy ended on October 31, 2019, while the landlord stated that it was on October 3, 2019.

Both parties agreed that the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 30, 2019 ("2 Month Notice") to the tenant. Both parties agreed that the notice had an effective move-out date of October 31, 2019 and that the tenant received one month of free rent for September 2019, pursuant to the notice.

A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice is:

- *The landlord is a family corporation and a person owning voting shares in the corporation or a close family member of that person, intends in good faith to occupy the rental unit.*

The tenant seeks compensation under section 51(2) of the *Act* for 12 months' rent compensation of \$900.00, totaling \$10,800.00. The landlord disputes the tenant's application.

The tenant testified regarding the following facts. He vacated the rental unit pursuant to the landlord's 2 Month Notice for the landlord or his close family member to occupy the rental unit, which was not done. The landlord did not move into the rental unit at all, he re-rented it to new tenants. The landlord posted an online advertisement to re-rent the unit a couple of months prior to this hearing, and when the tenant tried to reply to it, then it was removed. The tenant has a screenshot of the advertisement but did not provide it for this hearing. The landlord's brother has two children and a wife, so the rental unit is too small for the family to live in together. The tenant was told that the landlord would be moving into the rental unit but when he mailed this application to the landlord, it was sent to the landlord's old address, not the rental unit, because the landlord never moved into the rental unit.

The landlord testified regarding the following facts. His brother, who owns voting shares in the family trust, moved into the rental unit alone, from the end of October 2019, probably October 26, until July 2020, when he moved out of the rental unit in order to live with his wife at a different location. The landlord's brother was having spousal issues with his wife, so he lived in the rental unit alone. Online rental advertisements were posted for the rental unit in September 2020, as it was re-rented to new tenants on October 15, 2020, which is one year and 12 days after the tenant vacated.

Witness TR testified regarding the following facts. She is the wife of the landlord's brother. She is aware that the tenant was issued a 2 Month Notice to vacate, for the landlord's brother to move into the rental unit. The landlord's brother moved into the rental unit from the end of October 2019, probably October 20, until the beginning of July 2020, probably July 12 and before her birthday on July 27. The tenant alleged that the landlord and his brother made up an entire story about spousal issues because he believes the landlord's brother did not move into the rental unit.

Analysis

Section 49(4) of the *Act* states that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

A family corporation is defined in section 49(1) of the *Act* as an individual and one or more people including that individual's brother. I find that the rental unit is owned by a family corporation and the landlord and his brother own voting shares in the family corporation. The tenant did not dispute this fact during the hearing.

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 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, based on the testimony and evidence of both parties. I find that the tenant vacated the rental unit on October 3, 2019, pursuant to the 2 Month Notice. I find that the tenant vacated pursuant to the notice, since he left before the effective date in the notice and he received the one-month free rent compensation, indicated in the notice.

I accept the affirmed testimony of the landlord and witness TR that the landlord's brother, who owns voting shares in the family corporation, moved into the rental unit alone in good faith, from the end of October 2019 to the beginning of July 2020, a period of over eight months, which meets the minimum six months requirement under the *Act*.

I find that the tenant did not provide sufficient evidence that the landlord or a person owning voting shares in the family corporation did not live at the rental unit after the tenant vacated. The tenant's reference to a rental advertisement is from a couple of months prior to this hearing, which the landlord confirmed was in September 2020, since the rental unit was re-rented to new tenants as of October 15, 2020. October 2020 is approximately one year after the tenant's tenancy ended. Even though the landlord named in this application did not personally move into the rental unit, I find that the landlord's brother did, as he also owns voting shares in the family corporation.

Therefore, I find that the landlord used the rental unit for the reason indicated in the 2 Month Notice. I find that the rental unit is owned by a family corporation and a person owning voting shares in the corporation moved into the rental unit and occupied it in good faith for more than six months after the tenant's tenancy ended.

I dismiss the tenant's application for 12 month's rent compensation of \$10,800.00, without leave to reapply.

Conclusion

The tenant's 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: January 05, 2021

Residential Tenancy Branch