Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNETC

Introduction

This hearing was convened in response to the Application for Dispute Resolution in which the Applicants applied to recover the security/pet damage deposit and for compensation related to the Landlord's Notice to End Tenancy for Landlord's Use of Property.

The Applicant with the initials MW stated that on November 29, 2020 the Dispute Resolution Package and the evidence submitted to the Residential Tenancy Branch in November of 2020 was personally served to the Respondent. The Respondent stated that these documents were personally served to him on November 26, 2020. As the Respondent acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

On January 08, 2021 the Respondent submitted evidence to the Residential Tenancy Branch. The Respondent stated that this evidence was served to the Applicant with the initials MW, hereinafter referred to as the Applicant, and to the Applicant with the initials AN, hereinafter referred to as the Applicant #2 , via registered mail. He stated that the documents served to Applicant #2 were returned to him. The Applicant acknowledged receiving the package of evidence mailed to her and it was accepted as evidence for these proceedings.

Applicant #2 stated that she has viewed the evidence served to the Applicant. As Applicant #2 has viewed the evidence, it was accepted as evidence for these proceedings.

On March 07, 2021 the Applicants submitted additional evidence to the Residential Tenancy Branch. The Applicant stated that this evidence was not served to the Respondent. As this evidence was not served to the Respondent, it was not accepted as evidence for these proceedings and it cannot be considered by me during these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Are the Applicants entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (Act),* because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?
Are the Applicants entitled to the return of their security/pet damage deposit?
Are the Applicants entitled to compensation for storage costs**?**

Background and Evidence

The Applicant stated that:

- This residential complex has an upper and a lower suite;
- She moved into the rental unit on July 01, 2018;
- She and her original landlord signed a written tenancy agreement;
- She is the only tenant named on the tenancy agreement;
- Her written tenancy agreement is for the entire residential complex;
- At the start of the tenancy she agreed to pay monthly rent of $2,400.00, by the first day of each month;
- A security deposit of $1,200.00 and a pet damage deposit of $1,200.00 was paid to the original landlord;
- After the tenancy began, her original landlord agreed that Applicant #2 could move into the lower rental unit;
- Applicant #2 moved into the lower suite on October 01, 2018;
- After the tenancy began, her original landlord agreed that Applicant #2 would pay $1,100.00 to him for rent and that she would pay $1,300.00 in rent to him;

- On August 24, 2020 her original landlord served her with a Two Month Notice to End Tenancy for Landlord's Use, via email;
- On August 31, 2020 the Landlord served her with the Two Month Notice to End Tenancy for Landlord's Use;
- Sometime between August 24, 2020 and August 31, 2020 a realtor served her with a Two Month Notice to End Tenancy for Landlord's Use;
- She vacated the rental unit on October 31, 2020;
- After she vacated the rental unit, she provided the Respondent with an email address, for the purposes of having him return her security/pet damage deposit;
- She did not provide the original landlord with her forwarding address after this tenancy ended;
- She did not provide the Respondent with a mailing address until she served him with this Application for Dispute Resolution;
- The Applicants are seeking compensation for the equivalent of 12 months rent because the Respondent re-rented the lower suite;
- When she vacated the rental unit, she had nowhere to move her belongings so she rented a storage locker for 2 months, for which she paid $547.00;
- She is applying to recover her storage costs;
- The original landlord returned $600.00 of her security deposit on April 28, 2021; and
- The remainder of her security/pet damage deposit has not been returned to her, which she is now seeking to recover.

Applicant #2 stated that:

- She entered into a verbal agreement with the original landlord for the lower suite;
- She and the original landlord agreed that she would pay rent of $1,100.00 to the original landlord, by the first day of each month;
- She did not pay a security or pet damage deposit;
- She vacated the lower suite on October 01, 2020; and
- She has never provided a forwarding address to either the original landlord or the Respondent.

The Respondent stated that:

- He purchased this residential complex from the original landlord;
- He took possession of the residential complex on November 01, 2020;
- Both Applicants had vacated the rental unit prior to him taking possession of the rental unit;

- Neither Applicant provided him with a service address until he was served with this Application for Dispute Resolution;
- The original landlord did not forward a pet damage deposit of a security deposit to him;
- He understands that the original landlord returned $600.00 of the security deposit to the Applicant on April 28, 2021 and that the original landlord returned another $600.00 of the security deposit on August 30, 2021;
- Prior to purchasing the rental unit, the original landlord told him the entire residential complex was being rented to the Tenant, at a monthly rate of $2,400.00;
- The original landlord never told him that he had a verbal tenancy agreement with Applicant #2 for the lower suite;
- He asked the original landlord to serve the Applicant notice to end the tenancy because he intended to move into the upper suite of the residential complex and to rent out the lower suite;
- He understands that he had to end the tenancy for the entire residential complex in order to move into the upper suite;
- He understands the original landlord served the Applicants with a Two Month Notice to End Tenancy for Landlord's Use; and
- He never served the Applicant with a Two Month Notice to End Tenancy for Landlord's Use.

A copy of the Two Month Notice to End Tenancy for Landlord's Use was submitted in evidence by both parties. It declares that the Applicants must vacate the rental unit by October 31, 2020 because 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.

Analysis

On the basis of the tenancy agreement submitted in evidence by the Respondent, the first page of the same tenancy agreement submitted in evidence by the Applicants, and the last page of the same tenancy agreement submitted in evidence by the Applicants, I find that the original landlord and the Applicant entered into a tenancy agreement for the entire residential complex, which consisted of two suites.

Section 14(1) of the *Residential Tenancy Act (Act*) stipulates that a tenancy agreement may not be amended to change or remove a standard term. Section 14(1) of the *Act*

stipulates that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

I find that the Applicants have submitted insufficient evidence that the original landlord and the Applicant amended their tenancy agreement to reduce the rent to $1,300.00 for the upper portion of the complex or that the original landlord and Applicant #2 entered into a verbal tenancy agreement for the lower suite. In reaching this conclusion I note that no documentary evidence was accepted for these proceedings that corroborates this testimony.

The Landlord submitted an email exchange between the original landlord and the Applicant, dated October 08, 2020 and October 09, 2020, in which the Applicant asserts that she rented the entire house, rather than two separate suites. The original landlord responds to that text message in which he declares, in part, that the Applicant is 3+ months "behind in the $2400 rent" and he asks her to ensure that she removes property that "your tenant" left behind. I find that this email exchange clearly refutes the Applicants' submission that Applicant #2 was occupying the lower suite on the basis of a verbal tenancy agreement with the original landlord. I find that it strongly suggests that when this tenancy ended, the original landlord and the Applicant both believed the entire complex was being rented to the Applicant.

While I accept that Applicant #2 was living in the lower suite, I find it entirely possible that she was living in the suite as a guest or a sub-tenant of the Applicant.

Section 49(5) of the *Residential Tenancy Act (Act*) authorizes a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit or the purchaser 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.

On the basis of the undisputed evidence, I find that the Respondent (purchaser) and the original landlord (seller) entered, in good faith, into an agreement of purchase and sale of the residential property.

On the basis of the undisputed evidence, I find that the Respondent (purchaser) asked the original landlord (seller), in writing, to give notice to end the tenancy because the purchaser or a close family member of the purchaser, intended in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that the Applicant was served with a Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49(5) of the *Act*, which declared that she must vacate the rental unit by October 31, 2020. The notice to end tenancy declares that 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.

On the basis of the undisputed evidence, I find that the Respondent moved into the upper portion of the rental unit and that he re-rented the lower portion of the rental unit.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent to 12 times the monthly rent payable under the tenancy agreement.

Section 51(3) of the *Act* permits me to excuse a landlord or purchaser from paying the penalty if, in my opinion, extenuating circumstances prevented the purchaser from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
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 Respondent should be excused from paying the penalty imposed by section 51(2) of the *Act*, pursuant to section 51(3) of the *Act*.

In these unique circumstances, the Respondent only wanted to move into the upper suite of this residential complex, however he had to end the Applicant’s tenancy because she was renting both the upper and the lower suite under one tenancy agreement. I find this was the only option available to the Respondent, as he simply did not have the ability to only end the Applicant’s tenancy in the upper suite. As there was

no reasonable option available to the Respondent to meet his intended objective, I find that he should not be subject to the penalty imposed by section 51(2) of the *Act.*

The application for compensation pursuant to section 51(2) of the *Act* is dismissed, without leave to reapply.

Section 51(1) of the *Act* stipulates that a tenant who receives Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49 of the *Act,* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. In these circumstances the Applicant was entitled to receive compensation of $2,400.00, which is the equivalent of one month's rent for the entire unit.

Payment pursuant to section 51(1) of the *Act* is intended to compensate tenants for the costs and inconvenience of moving, which would include storage costs. Even if I accepted the Applicant's testimony that she incurred storage costs of $547.00, I find that has, or is entitled to be, compensated for that loss pursuant to section 51(1) of the *Act*. I therefore dismiss the claim for storage costs.

In the event the Applicant has not received compensation pursuant to section 51(1) of the *Act,* she retains the right to file an Application for Dispute Resolution naming her original landlord.

Section 91 of the *Act* specifies that the obligations of a landlord with respect to a security or pet damage deposit run with the land or reversion. As explained in Residential Tenancy Branch Policy Guideline #17, this means that if the landlord changes, the new landlord must return/retain the security deposit in accordance with the *Act* .

As the both Applicants vacated the rental unit on, or before, October 31, 2020, which was the day before the Respondent assumed ownership of the property, I find that he never became the landlord of either Applicant. I therefore find that the obligations of the original landlord with respect to the security/pet damage deposit did not revert to the Respondent and I dismiss the application to recover the security/pet damage deposit from the Respondent.

The Applicant retains the right to file another Application for Dispute Resolution seeking to recover the security deposit from the original landlord. The Applicant is reminded

that she has an obligation for provide the original landlord with a forwarding address, in writing, before he is obligated to comply with section 38 of the *Act.*

Conclusion

The application for compensation pursuant to section 51(2) of the *Act* is dismissed, without leave to reapply.

The application for compensation for storage costs is dismissed, without leave to reapply.

The application to recover the security/pet damage deposit 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: March 13, 2021

Residential Tenancy Branch