



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Applicant under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicant and the Respondents. At the start of the hearing, the Respondents confirmed receipt of the Applicant’s Application and documentary evidence. As such, I find these documents were sufficiently served pursuant to Section 71 of the Act. The Respondents stated that they did not submit any documentary evidence in response to the Application.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

1. Is the Applicant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the Act?

Background and Evidence

The Applicant stated that her tenancy began on May 1, 2016. During her tenancy, the Applicant was required to pay rent to the Landlord in the amount of \$700.00 which was due on the first day of each month. The Applicant stated that the Landlord (seller)

served her with a Two Month Notice to End Tenancy stating all the conditions for the sale of the rental unit have been satisfied and the purchaser (Respondents) asked the Landlord, in writing to give this Notice because the purchaser (Respondents) or a close family member intends in good faith to occupy the rental unit. The Applicant provided a copy of the Two Month Notice dated July 29, 2019, which has an effective vacancy date of September 30, 2019.

The Applicant stated that she complied with the Two Month Notice and moved out of the rental unit on October 1, 2019 to allow for the Respondents to occupy the rental unit. The Applicant stated that she kept an eye on the rental property during the months following the end of the tenancy. The Applicant stated that she was looking for another place to rent and that on New Years Eve, she noticed an advertisement for her rental unit on several social media platforms. The Applicant stated that the Respondents' names were listed on the rental ads which stated that the rental unit was available for rent on February 1, 2020 for \$1,150.00 per month. The Applicant provided a copy of the advertisements in support.

The Applicant stated that the Respondents did not occupy the rental unit for at least 6 months, as such, the Applicant feels as though she is entitled to compensation equivalent to 12 times the rent, or \$8,400.00. If successful, the Applicant is also seeking the return of the filing fee.

The Respondents confirmed that they purchased the rental property which had a closing date of October 1, 2020. The Respondents stated that they asked the seller to serve the Two Month Notice to the Applicant to End the tenancy as the Respondents intended to occupy the basement suite of the rental property. The Respondents stated that the rental property also had an upstairs rental unit and that they intended to maintain that tenancy and occupy the basement suite rental unit to save money.

The Respondents stated that it was their intent to occupy the basement rental unit for one year until their young family grew older, at which point they intended to then move upstairs to occupy the upper rental unit which had more space. The Respondents stated that they began moving their items into the basement rental unit on October 2, 2019 after gaining vacant possession. The Respondents stated that they began to reside in the rental unit permanently on October 21, 2019.

The Respondents stated that they unexpectedly received a notice to end tenancy from the upstairs rental unit occupants with an effective vacancy date of February 1, 2020. The Respondents stated that they decided to move into the upper rental unit and re-rent

the basement suite instead of entering into a new tenancy for upstairs rental unit. The Respondents stated that they were unaware that they were required to occupy the basement rental unit for at least six months, and that they did not intend to deceive anyone. The Respondents stated that they moved upstairs sometime before February 1, 2020 and have re-rented the basement rental unit.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49 (5) states that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) 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;
 - (ii) 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.

Section 51(2) of the *Act* stated; 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.
- (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.

In this case, I accept that the Respondents purchased the rental property and instructed the seller to serve the Applicant with a Two Month Notice as the Respondents intended to occupy the basement rental unit in accordance with Section 49(5). I accept that the Applicant complied with the Two Month Notice and provided vacant possession to the Respondents on October 1, 2019. I accept that the Respondents took possession and moved into the rental unit on or about October 21, 2019.

During the hearing, the Respondents stated that it was their intent to occupy the basement rental unit for at least one year, however, once they received a notice to end tenancy from the upstairs occupants, they decided to move into the upstairs portion of the home and re-rent the basement rental unit as of February 1, 2020.

I find that the Respondents failed to occupy the basement rental unit for at least six months as per Section 51(2) of the *Act*. I further find that the Respondents provided insufficient evidence to demonstrate that an extenuating circumstance prevented the Respondents from using the rental unit for that stated purpose for at least 6 months' duration.

Based on the above, I find that the Applicant is entitled to **\$8,400.00** in compensation from the Respondents, pursuant to section 51(2) of the *Act*. As the Applicant was successful in their application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Applicant is therefore entitled to a Monetary Order in the amount of \$8,500.00.

Conclusion

Pursuant to section 51, 67, and 72 of the *Act*, I grant the Applicant a Monetary Order in the amount of **\$8,500.00**. The Applicant is provided with this Order in the above terms and the Respondents must be served with this Order as soon as possible. Should the Respondents fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 15, 2021