



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On January 7, 2021, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Tenant and the Landlords attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Landlords asked that an interpreter be provided. The Landlords were informed that the Residential Tenancy Branch did not arrange for an interpreter, but the Landlord could call a person to Act as their interpreter for the hearing.

After a 14-minute delay to the hearing, the Landlords had a person attend the hearing acting as their interpreter. There were no other issues noticed by me or raised by the

Landlords or Tenant regarding their understanding this matter and their ability to respond to the claim and the issues raised in the hearing.

The Landlords testified that they did not send a copy of their 3-page letter to the Tenant prior to the hearing. The Landlords' letter was excluded; however, they were given an opportunity to provide direct testimony as to its contents.

Issue to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Landlord and Tenant testified that the Landlords purchased the rental property in October 2020 and inherited the tenancy of the Tenant who had been living there since March 2020. The Tenancy was on a month to month basis. The Landlord and Tenant testified that rent in the amount of \$1,600.00 was due to be paid to the Landlord by the first day of each month. The tenancy ended on December 6, 2020 in accordance with a notice to end tenancy the Tenant received from the Landlord.

The Landlords testified that they issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 6, 2020 ("the Two Month Notice"). The Tenant provided a copy of the Two Month Notice. The reason cited for ending the tenancy within the Two Month 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.

Money Owed or Compensation for Damage or Loss Under the Act

The Tenant is seeking compensation in the amount of \$19,200.00 which is twelve months of rent paid under the tenancy agreement.

The Tenant stated that the Landlord or a close family member did not move into the rental unit and occupy the property.

The Tenant provided testimony that shortly after the Landlords purchased the rental property, the Landlord came to collect the rent from her and demanded that she pay an additional \$200.00 per month. The Tenant refused the illegal rent increase.

The Tenant testified that the Landlord then approached her with a plan to convert the duplex into a 4 plex and asked the Tenant to live in the upper part of the new four plex with a slight reduction of rent. The Tenant refused the Landlords' request.

The Tenant testified that the Landlord then issued her the Two Month Notice. The Tenant accepted the Two Month Notice and vacated the rental unit on December 6, 2020.

The Tenant testified that the Landlord or a close family member did not occupy the rental unit. She testified that her neighbour moved into the rental unit on the same day that she moved out. She testified that she observed the neighbor move her possessions into the unit. She testified that the neighbour is not a close family member of the Landlord.

The Landlord's interpreter had lengthy conversations with the Landlords. The interpreter stated that after the Landlord served the Two Month Notice, the Tenant moved out and then complained to the city bylaw department about illegal suites at the rental property. The interpreter stated due to this bylaw issue the tenancy of one of the occupants had to end, and the Landlord decided to help this pregnant occupant out by having her move her into the unit that had been vacated by the Tenant.

The Landlord's interpreter stated that the Landlord is now occupying the ½ unit that the pregnant occupant had to vacate. The Landlord stated that the pregnant occupant moved into the Tenant's rental unit the day after the Tenant moved out.

Analysis

Section 51 (2) of the Act provides:

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.

The Two Month Notice contains the following information on page 4:

YOU MAY BE ENTITLED TO ADDITIONAL COMPENSATION

After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months' rent payable under your current tenancy agreement.

You must apply to the Residential Tenancy Branch to be awarded this compensation. Your landlord may be excused from paying this amount if there were extenuating circumstances that prevented your landlord from accomplishing the purpose for ending your tenancy or using the rental unit for that purpose for at least 6 months.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy provides the following information with respect to extenuating circumstances:

An arbitrator may excuse a Landlord from paying compensation if there were extenuating circumstances that stopped the Landlord from accomplishing the purpose or using the rental unit. Some examples where it would be unreasonable and unjust for a landlord to pay compensation are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.*

Compensation for Breach of Section 51

Based on all of the above, the evidence and testimony from the parties, and on a balance of probabilities, I make the following findings:

I find that the Landlord issued the Two Month Notice citing that the Landlord or a close family member of that person, intends in good faith to occupy the rental unit. The Tenant accepted the Two Month Notice and moved out of the rental unit on December 6, 2020.

I find that the Landlord did not occupy the rental unit and instead rented the unit to a new tenant starting December 7, 2020.

The Act is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they do not use the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find that the Landlord did not use the rental unit stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. In accordance with section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered whether or not there are extenuating circumstances that stopped the Landlord from using the rental unit and which may excuse the Landlord from paying compensation. In accordance with section 51(3) of the Act it is my finding that the circumstances submitted by the Landlord do not meet the threshold of an extenuating circumstance in accordance with the intention of the legislation and the policy guideline.

The legislation does not grant me authority to vary the amount of compensation for a breach of section 51(2)(b) of the Act. I find that the Landlord owes the Tenants \$19,200.00 which is the equivalent of 12 times the monthly rent paid under the tenancy agreement.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$19,300.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlord breached section 51(2) of the Act by failing to use the rental unit for the purpose stated within the Two Month Notice for a six-month period of time. The Landlords must pay the Tenant the amount of 12 months' rent payable under the tenancy agreement.

The circumstance submitted by the Landlords as an excuse from paying compensation to the Tenant does not meet the threshold of extenuating circumstances in accordance with the intention of the legislation and policy guideline.

The Tenant is granted a monetary order in the amount of \$19,300.00.

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: May 12, 2021

Residential Tenancy Branch