



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on May 31, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51; and,
- recovery of the filing fee.

The Tenant attended the hearing and provided affirmed testimony. The Landlord did not attend the hearing. The Tenant testified that he sent the Notice of Hearing, and all evidence to the Landlord by registered mail on January 29, 2021. Tracking information was provided into evidence. The Tenant stated that the Landlord never picked up the package, and it was returned to him. The Tenant stated that the Landlord/respondent was the person who purchased the house from the previous owner, and who asked for possession of the entire house after the conditions of the sale were satisfied. The Tenant stated that he saw Facebook posts of the Landlord moving in and enjoying the house and the yard. The Tenant stated that he is confident that the Landlord was living in the upper unit of the house, which is where he sent the hearing documentation.

I accept the Tenant's undisputed testimony that the Landlord moved into the main part of the house (the Tenant used to live in the basement suite) by early December, and that he continues to reside in the house. The Tenant stated he has seen continual posts from the Landlord on Facebook showing he is living in the upstairs of the rental house.

After considering the evidence and testimony, I find the Tenant has sufficiently served the Landlord with the Notice of Hearing and evidence, by registered mail. Pursuant to

section 89 and 90 of the Act, I find the Landlord is deemed to have received the documents 5 days after they were mailed, February 3, 2021.

The Tenant was provided the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

The Tenant stated that monthly rent was \$1,025.00 per month. The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on October 19, 2020. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- 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.

The Tenant stated that the previous owner/landlord issued this Notice to him at the request of the new purchaser of the home (respondent on this application). The Tenant provided a copy of the request made through the real estate firm in a document titled "TENANT OCCUPIED PROPERTY - BUYERS NOTICE TO SELLER FOR VACANT POSSESSION". In this document, the purchaser, and future Landlord indicated that he, or a close family member wanted vacant possession of the rental suite so that he or a close family member could occupy the unit.

The Tenant testified that he rented the basement suite in the house, which is distinct from the upper unit. The Tenant also explained that there is a coach house in the rear of the property, which is rented out separately as well. The Tenant stated that he does not have an issue with the fact he received this Notice, but he feels the new Landlord

should be held accountable for not using the rental unit in the manner they indicated they would on the Notice.

More specifically, the Tenant is seeking 12 months compensation pursuant to section 51(2) of the Act because the Landlord did not use or occupy the rental unit, but rather re-rented it out for more money. The Tenant stated that he moved out of the rental unit on November 13, 2020, and the new Landlord/owner took ownership in late November 2020. The Tenant stated that on January 1, 2021, he noticed that this rental unit was posted on Facebook Marketplace for rent for \$1,400.00. The Tenant stated that he knows it is the same unit because the Landlord used photos that were taken when the house was sold, and the photos contained some of the Tenant's possessions.

The Tenant stated that he had one of his friends reach out to the Landlord and inquire about being able to rent this suite on January 4, 2021 (3 days after the Tenant saw it posted online), and the Landlord (or Landlord's partner) responded by saying that the unit was no longer available (since they just found new Tenant's) but offered the coach house as an alternative. The Tenant provided copies of these message exchanges, as well as copies of the ads. The Tenant also provided a witness statement from his friend, who made the suite enquiry on his behalf, to investigate this matter.

The Tenant stated that following this, he followed the Landlord on Facebook, and saw that he and his partner were continually posting photos of their day to day lives living in the upper unit at the house. The Tenant stated that since the basement suite was separate from the upper unit, where the Landlord's moved in, the Landlord has failed to follow through with the grounds on the Notice. The Tenant stated that reposting the rental suite at a higher rent, within a month or so of him moving out is a blatant contravention of the Act, and the Notice he issued.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant is seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$1,025.00) because the Landlord did not use the rental unit in the manner they indicated on the Notice that was issued.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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.

(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.

Based on the undisputed testimony and evidence, I accept that the new owner, and purchaser, is the appropriate person to be named as the Landlord for the purposes of this application, given the onus is on him to fulfill the obligations behind the Notice, since he requested the Notice to be issued for his use. I note the Tenant moved out around November 13, 2020, and within a month and a half, he saw the unit get reposted for rental. The Tenant provided a witness statement which shows they inquired about it 3 days after it was posted, and at that time, the Landlord (partner of) confirmed that it had already (and recently) been rented out.

Given the rental unit was listed on a public website, for rental, I find it more likely than not that this means it was not used or occupied by the Landlord or close family. I find the re-posting and subsequent re-rental, is a contravention of section 51(2) of the Act which typically entitles the Tenant to compensation. However, the issue now becomes whether or not there were extenuating circumstances such that the Landlord should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

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. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples 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.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

There is no evidence that there were any extenuating circumstances such that the Landlord ought to be excused from paying the compensation due.

I award the Tenant \$12,300.00, pursuant to section 51(2) of the Act, which is 12 times her rent of \$1,025.00.

As the Tenant was successful with his application, I also grant the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenant a monetary order in the amount of \$12,400.00 because the Landlord breached section 51 of the Act.

Conclusion

I grant the Tenants a monetary order in the amount of \$12,400.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: May 31, 2021

Residential Tenancy Branch