



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 9, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for 12 month's rent as compensation, pursuant to section 51 of the Act; and,
- Recovery of the cost of the filing fee.

The Tenant attended the hearing and provided affirmed testimony. The Landlord did not attend. The Tenant confirmed he understood Rule 6.11. The Tenant stated that he sent a copy of the application, Notice of Dispute Resolution, and evidence, by registered mail to the address listed as the Landlord's address for service on the 2 Month Notice to End Tenancy. The Tenant provided tracking information to show this package was sent, and delivered to the above noted address on May 26, 2021. I find the Tenant sufficiently served the Landlord with the above noted documents the same day it was delivered, May 26, 2021.

Both parties were 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.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation for loss or money owed pursuant to section 51?

Background and Evidence

The Tenant stated that he was paying monthly rent of \$1,550.00, and it was due on the first of the month. The Tenant stated that sometime in early 2021, his previous Landlord sold the house, and it was purchased by the Landlord named on this application, who in turn issued a 2 Month Notice on March 19, 2021. The Tenant stated that he subsequently moved out on April 15, 2021.

The Tenant stated that he has remained in contact with the Tenant who rents out the basement suite, and they confirmed that the Landlord, nor his family, ever moved into the rental unit. The Tenant stated that he observed that a Caucasian family began renting his ex-rental unit starting sometime in May.

The Tenant is seeking 12 months' compensation pursuant to section 51 of the Act because they feel the Landlord did not follow through with the stated purpose on the Notice they issued. A copy of the Notice was provided into evidence, and the Landlord selected the following ground:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

More specifically, the Tenant stated that the Landlord initially indicated they wanted to move in, then, after the Tenant moved out, they re-rented the unit to a different family. The Tenant confirmed this via photos of the new vehicles in the driveway, and the fact that the Tenant in the lower unit observed and confirmed that it was not the Landlord who moved in.

The Landlord did not attend the hearing to provide any testimony.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice. The Notice was issued and received by the Tenants on March 19, 2021. The Landlord selected the following ground:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

After reviewing the submissions and evidence, I find no evidence that the Landlord accomplished the stated purpose on the 2 Month Notice. As such, I find the Landlord has not met the onus placed on him to demonstrate he followed through with the grounds he selected on the 2 Month Notice. Consequently, I find the Landlord is required to pay the Tenant 12 times his monthly rent, totalling \$18,600.00, pursuant to section 51(2).

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I find the Tenant is entitled to \$18,700.00.

Conclusion

The Tenant is granted a monetary order pursuant to Section 51 and 67 in the amount of \$18,700.00. 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: November 9, 2021

Residential Tenancy Branch