Dispute Resolution Services

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 on February 3, 2022. 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. G.C. and her two sons were present at the hearing for the "Landlord". All parties provided affirmed testimony. Both parties confirmed receipt of each others evidence packages, and were ready and willing to proceed with all evidence submitted, even though it was submitted late.

All 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.

Issues to be Decided

- Is the Tenant entitled to compensation pursuant to section 51 the Act?

Background and Evidence

Both parties agree that monthly rent was $1,293.76. The Tenant is seeking 12 months' compensation, pursuant to section 51 of the Act because she feels the Landlord did not perform the stated purpose on the 2 Month Notice to End Tenancy for Landlord's Use (the Notice). A copy of the Notice was provided into evidence, which shows that it was issued under 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 individuals spouse)

The Tenant received the Notice on June 21, 2019, and moved out on August 31, 2019.

The Tenant stated that owner of the property is the Landlord named on this application (M.M.W.) The Tenant further stated that M.M.W.'s daughter is G.C. (who was present at the hearing) and is his Power of Attorney (POA). The Tenant does not feel G.C. should be considered a Landlord because she doesn't own the property.

Both parties explained that this is a family owned and run property. M.M.W. is the original owner. He has health and financial challenges, and as a result named his daughter, G.C., as his POA in November 2013 sometime. G.C. continues to be M.M.W.'s POA to this day and to manage all aspects of the rental unit.

Both parties agree that G.C.'s son moved into the property in September 2019, and lived there for over a year after the Tenant moved out. The Tenant takes issue with this because G.C.'s son is M.M.W.'s grandson, and this is not sufficient to qualify as a close family member and to satisfy the requirements of the Notice.

The Tenant stated that she moved into the rental unit in July of 2015, and at that time, she was mainly dealing with G.C. as she was managing the rental unit for M.M.W. The Tenant did not provide a copy of the original tenancy agreement signed. However, the most recent tenancy agreement was provided into evidence, which lists both M.M.W. and G.C. as Landlords. Only G.C. signed the tenancy agreement. G.C. was not only a named Landlord on that agreement, but she also signed the agreement with her own name/signature, rather than explicitly as a POA for the owner. The Tenant provided the last 3 rent increase forms to show that the Landlord was listed as M.M.W., but it was G.C. who signed the forms as POA.

The Tenant stated that she paid by cheques. Some cheques were issued to M.M.W. and some were issued to G.C. However, most of them were issued to M.M.W. G.C. confirmed that she has a joint bank account with M.M.W. so it does not matter who the cheques are written to, as they can be cashed either way.

G.C. stated that her father ran into financial troubles in the early 2000's and as a result, he had to borrow money from G.C. to pay some of the special assessments that were being levied against the condo. G.C. stated that part of this arrangement was for her to have full reversionary interest of the rental property starting in June 2013. Following this, G.C. became M.M.W.'s POA in November of 2013. A copy of the POA document was provided. However, no documents supporting the reversionary interest arrangement were provided into evidence. G.C. stated that she has been a joint-Landlord since 2013, and has conducted and managed all matters relating to this rental unit since that time.

G.C. provided copies of rent cheques that were issued to her by the Tenant, as well as correspondence she had with the Tenant's bank, when she was doing reference checks for the Tenant at the start of the tenancy in 2015. G.C. stated that she was, right from the start of the tenancy, a Landlord, and was named as such on the tenancy agreement. G.C. stated that when she allowed her son to move into the rental unit, following the end of this tenancy, she fulfilled the obligations of the Notice, and should not be penalized. G.C. stated that she intended to put her and M.M.W.'s names as Landlords on the Notice, but didn't think it was necessary at the time, especially since there is only space to put one name in the Landlord field.

Analysis

I note the Tenant is seeking 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 RENVOATIONS 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 Tenant on June 21, 2019. 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).

In this case, prior to determining if the Landlord fulfilled the obligations under the Notice, I must first determine if G.C. is a Landlord for the purposes of this application. I note the following portion of the Act:

***"landlord"**, in relation to a rental unit, includes any of the following:*

> *(a)the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
>
> *(i)permits occupation of the rental unit under a tenancy agreement, or*

(ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b)the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c)a person, other than a tenant occupying the rental unit, who

(i)is entitled to possession of the rental unit, and

(ii)exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d)a former landlord, when the context requires this;

Although G.C. asserts she has full reversionary interest in the property, and it has been this way since 2013, I find there is insufficient documentary evidence corroborating this point. That being said, I accept that G.C. has been the M.M.W.'s (the original owner) POA since November 2013, as there is a document clearly supporting this. I note G.C. was the primary interface for all tenancy and rental unit matters since at least 2013, and I note she was the one who signed the tenancy agreement as a Landlord. Both G.C. and M.M.W were named as Landlords in the most recent tenancy agreement, signed in 2017. However, only G.C. signed this tenancy agreement as a Landlord. The Tenant also agreed that, since the tenancy started in 2015, she only ever dealt with G.C.

I have reviewed this matter and although I accept that M.M.W. is the original owner of the property, the Act defines a "Landlord" to also include the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement. In this case, I find G.C. was acting as the owner's agent, and she was directly responsible for permitting occupation of the rental unit under the tenancy agreement. G.C. is also specifically named as a Landlord on the Tenancy Agreement, and was the only person who signed the agreement as a "Landlord". I find G.C. is a Landlord, as defined by the Act, and for the purposes of this application.

I also note the following portion of the Act:

Director's orders: notice to end tenancy

68 (1)If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a)the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b)in the circumstances, it is reasonable to amend the notice.

In this case, I note that G.C. filled out, completed, and was responsible for ensuring the Tenant got the Notice in June of 2019. In fact, she was responsible for managing all aspects of the tenancy and dealing with tenant issues. I note that when she filled out the Notice, she listed M.M.W. as the Landlord, but she signed the bottom of that Notice and printed her name beside the signature. In this case, I find it is reasonable to amend the Notice to include G.C. as a Landlord, as well as M.M.W. The Tenant would have known, or ought to have known, that G.C. was also the Landlord, as G.C. had been the *de facto* Landlord throughout the entire tenancy, and was clearly listed as the "Landlord" on the tenancy agreement.

It is not disputed that G.C.'s son moved into the property right after the tenancy ended, for at least 6 months. Given G.C. was also a Landlord, I find she was legally entitled to allow her son to move into the rental unit, while still complying with section 51(2) of the Act. I find G.C. has sufficiently demonstrated that she accomplished the stated purpose for ending the tenancy. As such, the Tenant's application for 12 month's compensation is dismissed, without leave to reapply.

Conclusion

The Tenants' application is dismissed, in full, 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: February 4, 2022

Residential Tenancy Branch