



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for money owed or compensation for damage or loss. The matter was set for a conference call.

The Landlord and their spouse (the “Landlord”) as well as the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties agreed neither of them submitted documentary evidence to these proceedings.

I have reviewed all oral testimony 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 a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that the tenancy began on October 1, 2021, that rent in the amount of \$1,080.00 was to be paid by the first day of each month, and at the outset of the tenancy, the Tenant had paid a \$540.00 security deposit to the Landlord.

The Tenant testified that they were served a Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") dated in January 2022. The Notice indicated that the Tenant was required to vacate the rental unit as of April 30, 2022. The reason checked off by the Landlord within the Notice was as follows:

- 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)

The Tenant testified that the previous owner had advised them that the property had sold and that the new owners wanted vacant possession. The Tenant testified that they moved out of the rental unit, in accordance with the Notice on April 27, 2022, and they confirmed that the Landlord returned the security to the Tenant in accordance with the *Act*.

The Tenant testified that the as of the date of these proceedings the Landlord had not moved in and, that currently, the rental unit is vacant.

The Landlord testified that they purchased the property from the previous owner and had requested that the property be vacant when they took possession. The Landlord testified that it had been their intent to move their mother in-law into the rental unit, their mother in-law would be working in the area, but due to an ongoing physical disability, they could not return to work.

The Landlord testified that in June 2022 when it became clear that their mother in-law would not be moving in, the decision was made to rent out the rental unit. The Landlord testified that they had a new renter for the rental unit as of July 2022, for a monthly rent of \$1,400.00.

The Tenant is requesting the legislated compensation for the Landlord not using the rental unit for the stated purpose.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51(2) of the *Act*, which states the following:

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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

I accept the Landlord's testimony that they did not use the rental unit for the stated purpose on the notice to end tenancy and that they ended up renting the rental unit to a new renter two months after the tenancy ended. I find this to have been a breach of section 51(2) of the *Act*, which required the Landlord to use the property for the stated purpose on the Notice.

During the hearing the Landlord offered an excuse for not using the property for the stated purpose, the Landlord submitted that their mother-in-law had not moved in due to a physical disability. Section 51 (3) of the *Act* states the following:

Tenant's compensation: section 49 notice

51 (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 Resident Tenancy Policy Guideline # 50 provides further guidance, stating the following:

“The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.”

As the Landlord has failed to provide any documentary evidence to support their claim that they should be excused for paying the legislated compensation, I find that there is insufficient evidence before me to prove the Landlord’s claim of excuse.

Therefore, pursuant to section 51 of the *Act*, I find that the Tenant has successfully proven they are entitled to compensation due to the Landlord’s breach of the *Act*. I award the Tenant compensation in the amount of **\$12,960.00**, consisting of the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

I grant the Tenant a Monetary Order in the amount of \$12,960.00. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: February 2, 2023

Residential Tenancy Branch