



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

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, and the recovery of their filing fee paid for this application. The matter was set for a conference call.

The Landlord and their Agent (the “Landlord”) and 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.

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.

Preliminary Issues – *Named Parties*

At the outset of these proceedings, the Tenant indicated that one of the respondents listed on their application was the previous owner, S.M.

Both the Landlord and the Tenant agreed that S.M. should be removed as a respondent to these proceedings.

Section 4.2 of the Residential Tenancy Branches Rules of Procedure states the following regarding amending an application during a hearing:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the parties to this dispute agreed that S.M. should not be listed as a respondent to these proceedings, and pursuant to section 4.2 of the Residential Tenancy Branches Rules of procedure, I find it appropriate to remove S.M. from the list of respondents to these proceedings.

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*?
- Is the Tenant entitled to recover the filing fee for this application?

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 tenancy agreement recorded that this tenancy began on October 1, 2018, and that the rent had initially been in the amount of \$2,700.00 per month. The Tenant testified that by the end of this tenancy, they were paying \$2,775.00 per month in rent. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that when they purchased the property, they asked the previous owner to serve a Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice"), as they had planned on moving in. The Notice recorded that it had been served on the Tenant on February 16, 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:

- 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 close family member intends in good faith to occupy the rental unit.

The parties agreed that the Tenant moved out of the rental unit, in accordance with the Notice as of April 30, 2022, and the Tenant agreed that the previous owner returned the security and pet damage deposits, as well as paid the one-month compensation due to the Tenant in accordance with the Act. The Tenant submitted a copy of the Notice into documentary evidence.

The Landlord testified that they took possession of this rental property as of May 2022 and that they did end this tenancy for their own use of the property, as it was their intent to reside in the home with their spouse. However, on May 9, 2022, the Landlord's spouse filed for divorce, which caused them to be unable to make the mortgage payments on the property. The Landlord testified that they then contracted a property management company to secure a new renter for this property. The Tenant submitted a copy of the online rental listing into documentary evidence

The Landlord testified that once they were made aware of the Act's requirement to use the property for the stated purpose on the Notice, and the penalty for not occupying the property, they decided to turn the single-unit rental property into two units and occupy the lower unit themselves and rent out the upper unit.

The Landlord's agent confirmed that the rental property was listed for rent on May 27, 2022, initially listing the whole unit, which was amended to the upper unit only when the Landlord decided to move into the basement. The Landlord's Agent testified that they secured a renter for the upper unit in the rental property as of June 24, 2022. The Landlord submitted a copy of the new tenancy agreement into documentary evidence.

The Landlord testified when asked, that they had not submitted any documentary evidence to support their testimony that it was due to their unexpected divorce, that caused them to not be able to use the property as initially intended.

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 testimony of the Landlord and their agent, supported by the documentary evidence that the Landlord did, in fact, listed the rental unit as available for rent at a monthly rent amount of \$3,500.00 per month in May 2022. I also accept the testimony of the Landlord and their agent, supported by the documentary evidence, that the Landlord decided to renovate this single-unit rental property into a two-unit rental property, and that the Landlord resides in the basement unit, and a new renter resides in the upper unit, with the new renters paying \$2,850.00 per month as of June 2022.

The Residential Tenancy Branch Policy Guide # 50. Compensation for Ending a Tenancy provides further guidance on section 51(2) of the *Act*, stating the following:

“Accomplishing the Purpose/Using the Rental Unit

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

If a section 49.2 order is granted, the renovations or repairs that are accomplished must be the renovations or repairs that required vacant possession so that there was authority to grant the section 49.2 order. A landlord cannot obtain a section 49.2 order to end a tenancy for renovations or repairs and then only perform cosmetic repairs or other minor repairs that could have been completed during the tenancy.

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see *Blouin v. Stamp*, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.”

I find that the Landlord was in breach of sections 51(2) of the *Act* when they re-rented the upper portion of the rental property within two months of this tenancy ending.

I acknowledge that an unexpected marital breakdown may constitute extenuating circumstances that could excuse this Landlord from this section of the *Act*; however, I find that the Landlord has failed to provide any documentary evidence to support a claim of extenuating circumstances due to divorce. Consequently, as the Landlord has not provided any evidence in relation to a claim of a possible excuse, I will not be considering it in this case.

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 **\$33,300.00**, consisting of the equivalent of 12 times the monthly rent of \$2,775.00, which was payable under the tenancy agreement at the end of this tenancy.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Tenant a monetary order in the amount of \$33,400.00, consisting of \$33,300.00 in compensation and \$100.00 in the recovery of the filing fee paid for these proceedings.

Conclusion

I grant the Tenant a Monetary Order in the amount of \$33,400.00. 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: March 14, 2023

Residential Tenancy Branch