



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 by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The original hearing was adjourned as the landlord's evidence had not yet been received by the Arbitrator. The matter was reconvened on today's date.

The tenant attended the first hearing and only the tenant's agent attended the reconvened hearing. The landlord and two agents for the landlord attended both hearings. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started 17 years ago, although the parties were unsure of the actual date. Rent for this unit was \$1,505.00 per month due on the first day of each month.

The tenant's agent testified that the tenant had been served with a Two Month Notice to End Tenancy on July 23, 2014. A copy of this Notice has been provided in documentary evidence by both parties. The Notice has an effective date of September 30, 2014 and provides two reasons to end the tenancy as follows:

1. The rental unit will be occupied by the landlord, the landlord's spouse, or a close family member of the landlord or the landlord's spouse.
2. The landlord has all necessary permits and approvals required by law, to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant's agent testified that when this application was filed for compensation neither the landlord nor a close family member had taken occupation of the rental unit and the rental unit had not been demolished or repairs made. The landlord did not have necessary permits and approvals in place when they issued the Two Month Notice and between July, 2014 and April, 2015 the landlord has still not got the necessary permits and approvals in place.

The tenant's agent testified that due to this the landlord has not fulfilled the reasons given on the Two Month Notice and the tenant is therefore entitled to compensation of two months' rent. The tenant was not prepared to have to have moved out of the rental unit and had to take the first place she saw in order to ensure she had somewhere to live.

The landlord's agent testified that their builder told them it would only take a few months to get permits and approvals to demolish the rental unit and so the tenant was served with the Two Month Notice to give the tenant sufficient time to find alternative

accommodation. The landlord's agents testified that they then applied for permits and approvals and found the City had made a mistake with the zoning of the property and it has taken the landlord over a year to get the permits and approvals to be able to demolish the rental unit and rebuild.

DP testified that the landlord has lost a year's rent and the tenant could have stayed in the rental unit until she had found a new place to live. They were all under the impression that they could get the permits and approvals within a few months after giving the tenant notice. DP referred to their documentary evidence which shows they had started the process and it was always there intent to demolish the building and the Notice was given in good faith but the City's mistake delayed the process.

The tenants agent testified that it is the tenant's right to apply for compensation because the landlord did not move into the unit and did not have the permits or approvals in place when they served the tenant with the Two Month Notice.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to occupy the rental unit or have a close family member occupy the rental unit or intends to demolish or renovate the rental unit.

I refer the parties to s. 51 of the *Act* which states:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Having considered the evidence before me I find the landlord did intend to demolish the rental unit; however, the landlord did not have all necessary permits and approvals to do this work prior to issuing the Two Month Notice to the tenant. I find the landlord therefore issued this Notice prematurely. Had the landlord waited until they had the necessary permits and approvals in place then the tenant could have continued to enjoy occupancy of the rental unit.

While I accept that the City had delayed the landlord getting permits and approvals these should have been in place as indicated on the Two Month Notice prior to issuing and serving the tenant with the Notice. Consequently, I must uphold the tenant's application for compensation for the equivalent of two months' rent to an amount of \$3,010.00 pursuant to s. 51(2) of the *Act*.

As the tenant has been successful with her application the tenant is also entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$3,060.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court (small claims) 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 13, 2015

Residential Tenancy Branch

