



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on September 23, 2016 for “Other” issues and recovery of the filing fee from the Landlord.

Both parties appeared for the hearing and provided affirmed testimony. The Tenant was assisted with his evidence presentation by his wife who did not provide affirmed testimony during the hearing.

The Landlord confirmed that he had received the Tenant’s Application and evidence by registered mail prior to the hearing. The Tenant denied receipt of the Landlord’s evidence by registered mail stating that he had not checked his mail for a long time. The Landlord served his evidence by registered mail on October 28, 2016. Therefore, I determined during the hearing that the Landlord had served it to the Tenant within the time limits stipulated by the Rules of Procedure. As the Tenant failed to take expeditious steps to check his mail while in the dispute resolution process, I allowed the Landlord to use his evidence but asked that he refer to it orally in the hearing so that the Tenant could be aware of the contents. The Tenant had no objection to this and the hearing continued.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

The Tenant had applied for “Other” issues on his Application and in the details of dispute section he wrote that the Landlord had failed to use the property for the use he had indicated on the notice served to him to end his tenancy. The Tenant explained at the start of the hearing that the notice to end tenancy served to him by the Landlord stated on page 2 that the Tenant was entitled to two months compensation if the

Landlord failed to use the property indicated on the notice to end tenancy. The Tenant confirmed that he was seeking compensation in the amount of \$2,400.00 (\$1,200.00 x 2) pursuant to page 2 of the notice to end tenancy. As a result, pursuant to my authority provided by Section 64(3) (c) of the *Residential Tenancy Act* (the “Act”), under these circumstances I amended the Tenant’s Application for damage or loss under the Act, regulation or tenancy agreement for the amount of \$2,400.00 as I consider the Landlord to have been put on sufficient notice of the claim against him.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation payable under Section 51(2) of the Act?

Background and Evidence

The parties agreed that this tenancy started in spring 2012. Rent for the tenancy started off at \$1,000.00 and was then increased during the tenancy to \$1,200.00 due to an extension of the use by the Tenant of the rental property. Rent was payable on the first day of each month and no security deposit was requested.

The Tenant testified that he was served with a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) on March 1, 2016. The 2 Month Notice was provided into evidence and had a vacancy date of May 1, 2016. The reason for ending the tenancy was because the Landlord intended to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The Tenant stated that he accepted the 2 Month Notice and moved out of the rental unit pursuant to the vacancy date on May 1, 2016 and received his one month compensation. The Tenant testified that in the two months prior to the tenancy ending the Landlord arranged for multiple viewings of the rental unit for selling. The Tenant testified that within one week of the tenancy ending, the Landlord had a for sale sign posted outside of the house.

The Landlord stated that they owned a cattle business on the rental property and they needed someone to look after the cattle on a full time basis. Therefore, they served the 2 Month Notice because they wanted a full time caretaker to do this job. The Landlord denied that they had multiple viewings of the rental unit for the purpose of selling but that only on two occasions there were church groups that came by, some of whom were interested in performing the role of the caretaker they were seeking to employ.

However, due to the extensive damage caused by the Tenants no prospective caretaker wanted to move in. The Landlord testified that after he had served the 2 Month Notice, he discovered that the Tenant had caused an excessive amount of damage to the rental unit and the Landlord could not afford the repairs to convert the rental unit.

The Landlord provided photographic evidence of mold in the rental unit which he stated was caused by the Tenant through the Tenant's lack of heating of the home. As a result, he was encouraged by a friend to put the rental unit on the market for sale in the alternative. The Landlord testified that the rental unit went up for sale on May 5, 2016 and at the time of this hearing it was still on the market for sale.

The Landlord submitted that he still intends to get a caretaker for the rental unit. The Landlord explained that he did not approach the Tenant about the damage or that he was intending to put it on the market for sale because the Tenant was happy to have received the 2 Month Notice and was going to be moving out.

Analysis

I have carefully considered the evidence of both parties in making a determination on the Tenant's monetary claim based on the balance of probabilities. Section 51(2) of the Act states that after a 2 Month Notice has been served to a tenant:

51 (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.

[Reproduced as written]

Based on the parties' evidence before me, I find the Landlord has failed to use the rental unit for at least six months for the use by a caretaker. Based on the Landlord's own evidence, the rental unit has not been converted for use by a caretaker and neither has a caretaker been employed to take occupy the home and take care of the cattle on the rental property which was the Landlord's original intention.

The Landlord argued that he did not have the financial means to convert the rental unit and still intends to find a caretaker for the rental unit. In this respect, I find that a change in circumstances of a landlord does not relieve them of their obligation to compensate a tenant for not using the property for the reason used to end the tenancy. Furthermore, the compensation payable under Section 51(2) of the Act does not rely on a good faith intention; it relies on the issue of whether the Landlord used the property for which the tenancy was ended. In any case, I find the Landlord's claim that he still intends to find a caretaker for the rental unit to be circumspect because the Landlord currently has the rental unit for sale and therefore this is contradictory evidence of steps not being taken by the Landlord to accomplish the stated purpose for ending the tenancy.

Based on the foregoing, I grant the Tenant his relief sought pursuant to Section 51(2) of the Act in the amount of \$2,400.00. As the Tenant has been successful in this matter, I also award the Tenant the filing fee of \$100.00 pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is \$2,500.00.

The Tenant is issued with a Monetary Order for this amount which must be served on the Landlord. The Tenant may then file and enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment in accordance with the Tenant's written instructions. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord did not use the rental unit for the reason indicated on the 2 Month Notice. Therefore, the Landlord is ordered to pay the Tenant \$2,500.00 in compensation inclusive of the filing fee. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 10, 2016

Residential Tenancy Branch