



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding.

I confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided undisputed evidence that he sent the landlord the Application for Dispute Resolution hearing package by registered mail on December 8, 2018. The tenant provided a Canada Post tracking number for the mailing, listed on the cover page of this decision. The tenant advised me that the package was sent to the residential address of the landlord, as the landlord gave notice they would be moving into the residence themselves. The tenant advised that the package was returned to him as unclaimed by Canada Post. Despite being returned by Canada Post, I find the landlord is deemed served with the Application for Dispute Resolution hearing package on December 13, 2018 five days after the registered mailing, pursuant to section 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to compensation for the landlord's breach of the Act?

Is the tenant entitled to recover the \$100 filing fee for this application from the landlord?

Background and Evidence

The tenant gave the following undisputed testimony. The tenancy concerns the basement unit of a house with an upper unit. The tenancy began with a previous landlord in August of 2017. Rent was set at \$900.00 per month including utilities, payable on the first day of each month. In August 2017, the previous landlord advised the tenant that the house was sold and the new landlord may be interested in keeping him as a tenant. On August 14, 2018, the tenant was given a Two Month Notice to End Tenancy for Landlord's Use ("Notice") with an effective date of October 31, 2018.

The reason for ending the tenancy stated on the Notice is:

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

The tenant was also given a document called '*tenant occupied property – buyers notice to seller for vacant possession*', entered as evidence in these proceedings. On this document, the buyer signed the following statement:

I/we intend in good faith to occupy the residential premises. I/we am/are purchasing under the Contract of Purchase and Sale dated August 14, 2018.

The previous landlord compensated the tenant with one month free rent for October 2018.

Suspecting the landlord wanted to end the tenancy with him to obtain tenancy with higher rent, the tenant looked at a popular online classified advertisement site. He found a photograph of his rental unit with his former address listed for \$1,200.00 plus 1/3 utilities. A copy of the advertisement was included as evidence.

After moving out on October 31, 2018 the tenant continued to live in the neighbourhood and walked by the rental unit frequently. He noticed the rental unit vacant for a long period of time until the beginning of December when he started seeing a car parked there. The lights never went on in the upper unit but went on and off in the lower basement unit, making him believe the upper unit remained vacant but the basement one was now re-rented for the beginning of December.

Analysis

Section 51(2) of the *Act* sets out financial compensation for a tenant when a landlord does not take reasonable steps to accomplish the purpose for which the tenancy was ended or fails to use the rental unit for the purpose the notice was given after the effective date of the notice. Does it matter if the reason for ending the tenancy was

given in good faith? The Residential Tenancy Branch's Guideline (PG-50) 'Compensation for Ending a Tenancy' provides guidance to arbitrators, landlords and tenants on compensation for ending a tenancy.

PG-50 does not make any reference to good faith. It is arguably very clear in this Guideline that the arbitrator must consider whether reasonable steps were taken to accomplish the purpose of ending of the tenancy, whether or not the reason for ending the tenancy was issued in good faith. Below is the key section of the Guideline:

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving 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 at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

The landlord did not attend this hearing to dispute the tenant's evidence or testimony. Based on the tenant's undisputed testimony and evidence that the rental unit was advertised for rent and re-rented at a higher rent within six months of the effective date of the Notice, I find that steps have not been taken by the landlord, within a reasonable period after the effective date of the Notice, to accomplish the stated purpose for ending the tenancy. The tenant is entitled to compensation provided for in section 51(2) of the Act.

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- taken steps to accomplish 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.

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances. The arbitrator has no authority to vary or alter the amount of compensation. The landlord did not attend to provide evidence of extenuating circumstances and I award the tenant the equivalent of 12 months' rent as compensation. As the tenant was paying \$900.00 per month in rent, I award the tenant \$10,800.00 in compensation.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$10,900.00**. 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: April 1, 2019

Residential Tenancy Branch