



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no issues were raised regarding service of the application or the other's evidence. The landlord confirmed she provided no documentary evidence for this hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord?

Background and Evidence

The undisputed evidence was that this tenancy began on November 11, 2016, for a monthly rent of \$2,000.00, and it remained the monthly rent for the length of the tenancy. The tenant submitted a copy of the written tenancy agreement.

The tenant's monetary claim is \$24,000.00 for 12 months' compensation for receiving the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice").

In support of this claim, the tenant testified that he received the Notice from the landlord on January 21, 2019, which listed an end of tenancy date of March 31, 2019. The tenant submitted a copy of the Notice, which was dated and signed by the landlord on January 21, 2019. As a reason for ending the tenancy, the landlord listed that the rental unit will be occupied by the landlord or a close family member of the landlord.

The tenant said he moved out of the rental unit on March 31, 2019.

The tenant testified that the landlord is not currently using and has not used the rental unit for the stated purpose since he vacated. The tenant said that on July 1, 2019, he noticed the home containing the rental unit was listed for sale. The tenant said he was not sure when the home was put up for sale, but that the listing indicated the house had been on the market for 45 days.

The tenant submitted that he is entitled to compensation equivalent to 12 months' rent in the amount of \$24,000.00, as the landlord has not used the rental unit for the stated purpose listed on the Notice.

The tenant's additional relevant evidence included, but is not limited to, the real estate listing and photos from the listing showing an empty house.

Landlord's response-

The landlord testified that her son who was attending law school in another city in Canada told his mother he was going to move back and needed a place to stay. The landlord said that after her son told her of his plans, she issued the Notice to the tenant.

Instead of moving back, the landlord's son informed his mother in May 2019, that he had changed his mind and was instead moving to yet another city in Canada for job opportunities.

The landlord said she honestly believed her son was coming back, as she would have no other reason to end the tenancy. The landlord said she uses the rental unit for income, not profit, and for companionship.

The landlord confirmed signing the listing agreement for the home sale in May, as she needed to downsize now that her son was not coming back.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence is that on January 21, 2019, the landlord issued the tenant a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a move-out date of March 31, 2019. The tenant complied with the move-out date.

The landlord marked the Notice indicating that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

Section 51(2) provides that if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or if the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

I accept the tenant's undisputed evidence, along with the landlord's confirmation, that the landlord listed the rental unit for sale sometime in May 2019, less than two months after the tenancy ended.

I therefore find that the rental unit was not being used for the stated purpose on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in this case, March 31, 2019.

While the landlord did not specifically mention that extenuating circumstances prevented her from using the rental unit for the stated purpose, I infer her response at the hearing amounted to this argument.

Residential Tenancy Policy Guideline 50 provides examples of extenuating circumstances, such as death of the close family member intending to occupy the rental unit.

In this case, the landlord failed to submit any statements or evidence from her son, such as when he gave notice to his mother, when his school ended for the year, or what prevented him from moving back.

I therefore find on a balance of probabilities and from my interpretation of the Policy Guideline 50 that the landlord has failed to provide sufficient evidence that extenuating circumstances prevented her from using the rental unit for the stated purpose.

I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent.

As a result, I grant the tenant a monetary award of \$24,000.00 as requested, the equivalent of monthly rent of \$2,000.00 for 12 months.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$24,000.00.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of \$24,000.00 is granted and he has been granted a monetary order for that amount.

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: October 29, 2019

Residential Tenancy Branch