



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was an application by the tenant for compensation pursuant to section 51 of the Residential Tenancy Act (RTA) in respect to a section 49 Two(2) Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord with an effective date of July 31, 2008. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on December 19, 2008 and again on January 16, 2009, the landlord did not participate in the conference call hearing.

On the basis of the solemnly affirmed and undisputed testimony presented and upon careful consideration of the undisputed evidence submitted I have reached a decision.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by registered mail, and having been provided with the tracking numbers for same, I find as follows with respect to the applicant's claims.

Issues to be Decided

Is the tenant entitled to a monetary order for the equivalent of two months rent pursuant to section 51(2) of the Residential Tenancy Act?

Is the tenant entitled to recovery of the filing fee for the cost of this application?

Background and Evidence:

The tenancy agreement provided that the tenant pay rent of \$690 per month payable on the first day of each month. The tenancy ended on July 1, 2008 after the tenant was served with a 2 month notice under section 49 of the Residential Tenancy Act for landlord use of the property.

The tenant's claim includes evidence that the rental unit was re-occupied by tenants no later than October 1, 2008 whom are not affiliated with the landlord: not the landlord, landlord's spouse, or close family member of the landlord or the landlord's spouse.

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

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.

Analysis

The Residential Tenancy Act provides that the landlord must use the rental unit for the stated purpose for at least 6 months. I have no evidence to counter the tenant's claim that the rental unit, now rented again, is not occupied in accordance with the purpose for which the Notice to End Tenancy was issued to the tenant.

I find the applicant is entitled to the amount claimed of \$1380, which represents the amount of \$690 per month, doubled. I also find the tenant is entitled to recovery of the filing fee paid for the cost of this application

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$1380, plus the sum of \$50 in respect of the filing fee paid for a **total of \$1430**.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Dated February 17, 2009