

DECISION AND REASONS

Dispute Codes: MNSD, MNDC, RR

Introduction

This hearing was convened upon the cross-applications of the tenant and the landlord.

The tenant seeks

1. Monetary orders for compensation for damage or loss; and
2. An order that the landlord comply with the Act;
3. A repair Order.

TOTAL MONEY CLAIMED BY THE TENANT: \$1,870.00

The landlord seeks:

1. To keep all or part of the pet damage deposit or security deposit;
2. To recover the filing fee for the cost of this application; and
3. Other

TOTAL MONEY CLAIM BY THE LANDLORD: \$212.00

SUMMARY OF EVIDENCE AND SUBMISSIONS

The tenant says that she lived in the rental unit from approximately June 24, 2004 to July 31, 2008. The tenant submitted in evidence a 2 month Notice to Vacate issued by the landlord DG effective July 31, 2008. In that Notice the landlord states that the rental unit "...will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child of the landlord or the landlord's spouse).

The tenant testified that she returned to the rental unit in November and discovered through inquiries around the neighbourhood and through peeking in the windows that the rental unit was not being occupied by a relative of the landlord. The tenant therefore seeks compensation under Section 51.

The landlord testified that he issued the Notice to Vacate to allow his mother to move into the basement suite while he renovated her bathroom. The landlord says his mother did move in and resided there for two weeks but became ill and was transferred to a care home. The landlord testified that his mother died on October 5, 2008. In his application for Dispute Resolution the landlord claims the security deposit paid by the tenant in the sum of \$212.00 to be paid to the Children's Hospital, he also seeks to "restore my mother's good name" and recovery of the filing fee in the sum of \$50.00.

The landlord also gave evidence that he is not the landlord.

ANALYSIS AND FINDINGS

With respect to the landlord's claim that he is not the landlord, I find that he did issue and sign the Notice to End Tenancy in this matter and I therefore find that while his mother may have been the actual owner, the landlord DG took on the role of landlord by issuing the Notice to End Tenancy and is therefore the correct party to be named in this application.

Section 49 of the Residential Tenancy Act allows a landlord to end a tenancy to allow a close family member to occupy the rental unit:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's father, mother, spouse or child, or
- (b) the father, mother or child of that individual's spouse;

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Residential Tenancy Act* stipulates what happens when a landlord does not use the rental property for the stated purpose at all or for at least 6 months.

Section 51 says:

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.
- (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.

The landlord's evidence is that his mother did move into the rental unit so that she would have bathroom facilities while her bathroom was renovated. The landlord gave no evidence that his mother intended to remain in the rental unit and, in fact, she did not remain as she became ill and subsequently died. The landlord did not therefore use the rental unit for the purpose stated in the notice for at least 6 months. While the circumstances in this matter are difficult, the Act is clear that the landlord must pay a tenant an amount that is the equivalent of double the monthly rent if the purpose for which the notice was given is not met.

I therefore find that the landlord must pay to the tenant \$850.00 representing two months rent.