



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on June 26, 2009. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Were steps taken to accomplice the stated purpose for ending the tenancy?
- If not is the tenant entitled to two months rent in compensation?

Background and Evidence

This tenancy started on or about August 01, 2005 and ended on April 30, 2009 after the tenant was served a Two Month Notice to End Tenancy for the Landlords Use of the Property. At the end of the tenancy the rent for this unit was \$951.00.

The tenant testifies that she received the notice and endured considerable stress having to move out of her home. She discovered that the landlords have not used the rental unit for the purpose stated on the Notice. Instead the landlord's brother has moved into the unit with a friend. The tenant seeks two months rent in compensation and also seeks moving costs and compensation for the stress involved with moving. The tenant did confirm that she received her last month rent free in compensation for the two month notice.

The landlords testify that their brother is a close family member and has been, and continues to, both financially and emotionally dependent on them. They served the Notice so their brother could start to live independently of them as his health improved. A friend also lives with him to help support him in his step towards independence. The landlords state that they do not collect any rent from their brother or his friend.

Analysis

Section 49 of the *Act* clearly states that

"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;

(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.

I find the landlord's brother does not fall under the category of "close family member" as described under section 49 of the *Act* and as such I uphold the tenants claim for double

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the last months rent of \$1,902.00 in compensation for the rental unit not being used for the stated purpose on the notice pursuant to section 51 of the *Act*.

The tenant also seeks compensation to the amount of \$799.75 in compensation for moving and stress of the move. However, I find the tenant did receive one month's free rent at the end of her tenancy to compensate her for her move. If the landlords had upheld the reasons on the notice and a close family member had moved into the unit the tenant would have still incurred moving costs. Therefore, I dismiss this section of the tenant's claim without leave to reapply.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,902.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: October 08, 2009.

Dispute Resolution Officer