

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The rental unit is in the basement floor of a residence in which the landlord occupies the upper floor. The parties agreed that on or about June 16, 2009 the landlord gave the tenant a notice to end tenancy (the "Notice") which stated that the landlord or a close family member intended to occupy the rental unit. The tenant vacated the rental unit pursuant to the Notice and was compensated pursuant to section 51 of the Act when he resided in the rental unit rent-free in the month of July.

The tenant alleged that the landlord failed to use the rental unit for the purpose stated in the Notice and that as of the date of the hearing, the rental unit was unoccupied. The tenant and his witness testified that they heard the landlord's husband say that no one was living in the rental unit. The tenant submitted a written statement from S.F. who lives in a separate unit next to the rental unit in which she stated that she had not heard or seen any activity in the rental unit since the tenant vacated the unit. During the hearing an attempt was made to contact S.F. to obtain her testimony, but she could not be reached at the telephone number provided by the tenant.

The landlord testified that her daughter, P.M., was engaged and moved into the rental unit in September with her fiancé. The landlord further testified that while P.M. has remained in the rental unit, the fiancé vacated the unit in January to pursue studies in

another city. The landlord testified that her husband may have told the tenants that no one was living in the rental unit, but by that statement, he meant that the unit had not been re-rented not that it was unoccupied. During the hearing an attempt was made to contact P.M. to obtain her testimony, but she was unavailable at the telephone number provided by the landlord.

Analysis

The tenant bears the burden of proving that the landlord has failed to use the rental unit for the purpose stated on the Notice. The tenant was unable to provide any evidence to corroborate his opinion that the unit was not occupied by the landlord or a close family member. I find that the written statement of S.F. can be given little weight as she did not state that no one was living in the unit but merely that she was unaware of activity in the unit. I find that it is entirely possible that a party could live in the unit, particularly a family member who S.F. would be accustomed to seeing on the property, without S.F. having been aware of the fact. I do not find the statement of the landlord's husband to be determinative of the issue.

Conclusion

I find that the tenant has not proven on the balance of probabilities that the rental unit is not occupied by the landlord's daughter and accordingly dismiss the tenant's claim.

Dated: May 18, 2010
