

DECISION

Dispute Codes MNDC, FF

Introduction

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

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenant vacated the rental unit on January 31, 2010 pursuant to a 2 month notice to end tenancy which stated that the landlord intended to occupy the rental unit. The parties further agreed that the landlord has not moved into the rental unit.

The landlord testified that at the time he gave the notice, it was his intention to move into the rental unit, but since that time his life circumstances have changed. The landlord testified that he is in the process of a divorce and has been advised by his lawyer not to leave New York, where he currently resides, as this may prejudice him in custody negotiations with his former spouse.

The tenant seeks an order for double her monthly rent, which was \$1,550.00, pursuant to section 51 of the Act. The tenant further seeks to recover costs associated with vacating the rental unit as well as the filing fee paid for this application and for a previous application in which she was unsuccessful.

Analysis

51(2) of the Act provides as follows:

51(2) In addition to the amount payable under subsection (1), if

51(2)(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

51(2)(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.

Although I accept that the landlord was prevented from moving into the rental unit due to a drastic change in his circumstances, the law makes no allowance for such events. I find that the landlord failed to use the rental unit for the purpose stated in the notice to end tenancy. I find that the landlord is liable under section 52(2) to pay the tenant \$3,100.00, which is double the \$1,550.00 per month rent the tenant paid during the tenancy. I award the tenant \$3,100.00.

The tenant's claim for the costs associated with moving and the costs of filing for the previous dispute resolution hearing is dismissed. Because the legislation has provided for a penalty to be levied against landlords who unlawfully evict tenants, the tenant is limited to recovering the amount of the penalty. As for the costs incurred for the previous dispute resolution hearing, the tenant's claim to recover the filing fee in the previous application was dismissed and cannot be adjudicated upon a second time.

The tenant is entitled to recover \$50.00 of the filing fee paid to bring the current application and I award her a further \$50.00. The claim for the remaining \$50.00 paid is dismissed as the tenant was not successful in claims that brought her over the \$5,000.00 mark which required her to pay a \$100.00 filing fee.

Conclusion

I grant the tenant an order under section 67 for \$3,150.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: July 14, 2010

Dispute Resolution Officer