



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC FF

Introduction

This is the Tenant's application for a Monetary Order for compensation for damage or loss under the Residential Tenancy Act (the "Act"); and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order for the equivalent of double the monthly rent, pursuant to the provisions of Section 51(2) of the Act?

Background and Evidence

The parties agreed on the following facts:

- The tenancy began on July 1, 2009. Monthly rent was \$1,300.00 per month, due on the first day of every month. A copy of the tenancy agreement was entered in evidence.
- The Landlord issued a Notice to End Tenancy for Landlord's Use on December 4, 2009. The reason given for ending the tenancy was that the Landlord intended to move into the rental unit.

- The Tenant did not dispute the Notice to End Tenancy and moved out of the rental unit on or about February 20, 2010. The Tenant received her compensation pursuant to the provisions of Section 51(1) of the Act.

The Tenant gave the following testimony:

- At the beginning of April, 2010, the Tenant discovered that the Landlord had listed the rental unit for sale.
- The Tenant believes that the Landlord's primary purpose in issuing the Notice to End Tenancy was to sell the rental unit and not to live in the rental unit.
- The Tenant stated that she enjoyed living in the rental unit and if the Landlord had sold it, the purchaser might have allowed her to stay there.

The Landlord gave the following testimony:

- The Landlord testified that her intent was to live in the rental unit, but personal circumstances changed and she could not afford to live there any longer. This caused her to list the property for sale on April 4, 2010.
- The Landlord testified that she moved into the rental unit on March 20, 2010, after she had painted and done some minor renovations.
- The Landlord testified that she still lives in the rental unit and does not intend to sell it until her uncle has finished renovations. She expects to live in the rental unit for at least 6 months before she sells it.

Analysis

Section 51 of the Act states:

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.

Section 49(8) of the Act allows a tenant to dispute a Notice to End Tenancy for Cause within 15 days of receiving the Notice. If a tenant wished to question the "good faith" intent of the Landlord that was her opportunity to do so. If she had been successful, the Notice to End Tenancy would have been cancelled and the tenancy would have continued. The Tenant did not dispute the Notice to End Tenancy, and was paid compensation pursuant to Section 51(1) of the Act.

The Tenant's application for compensation under Section 51(2)(b) of the Act is premature as six months has not lapsed since the Landlord moved into the rental unit.

The Tenant's application is dismissed **with leave to reapply**.

Conclusion

The Tenant's application is dismissed **with leave to reapply**.

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: August 23, 2010.

CORRECTED August 24, 2010

Dispute Resolution Officer