



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act for the equivalent of two months rent under section 51(2) when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued and the landlord failed to utilize the unit for the purpose stated in the Notice. Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord ended the tenancy for landlord's use and if so was the two-month notice for Landlord Use issued, served and acted upon in compliance with the Act including: a) steps taken by the landlord to accomplish the stated purpose given for ending the tenancy within a reasonable period after the effective date of the notice and; b) use of the property by the landlord for the stated purpose for a period of at least 6 months

The burden of proof is on the landlord to establish that after the Two-Month Notice was issued the rental unit was utilized for the stated purpose shown on the notice for 6 months.

Background and Evidence

Submitted into evidence was a copy of an advertisement along with a notarized translation, a written statement from the landlord confirming that the tenancy was ended for landlord's use and that the landlord occupied the unit for approximately 4 months, written testimony from other occupants confirming that the landlord had resided in the unit., a copy of a purchase and sale contract and a copy of a registration document.

The tenant testified that a Two Month Notice to End Tenancy for Landlord's Use was received in September purporting to end the tenancy as of the end of October 2009 for landlord's use. According to the tenant, it was discovered in March 2010 that the landlord was no longer residing in the unit.

The landlord acknowledged that after moving into the unit, it was found to be too small for the landlord's family and as a result, the landlord found it necessary to move elsewhere after four months. The landlord testified that there was no bad faith involved.

Analysis:

Section 49(3) of the Act provides that a landlord is entitled to 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. All agreed that this was the stated purpose given for ending the tenancy. Section 51(2) of the Act states that in addition to the one month payable under section 51(1), the landlord must also pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if 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 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.

In this instance the landlord's stated intent was to move into the unit and the tenant accepted the termination of the tenancy on this basis without dispute. However, I find that although the landlord did comply with section 51(2)(a) by converting the unit into the landlord's primary residence within a reasonable time after ending the tenancy, the

landlord then failed to utilize the unit for the stated purpose for a period of at least 6 months as required by section 51(2)(b). Regardless of whether or not this had indicated any bad faith on the part of the landlord, I find that section 51 of the Act imposes a mandatory payment equivalent to double the monthly rent payable under the tenancy agreement should the landlord fail to fully comply with section 51(2) of the Act.

Given the above, I find that the tenant is entitled to receive \$3,070.00 comprised of double the monthly rent of \$1,520.00 and the \$50.00 fee for filing the application.

Conclusion

Based on the testimony and evidence, I hereby grant the tenant a monetary order in the amount of \$3,070.00 against the landlord. This Order must be served on the landlord in person or by registered mail and may be filed in the Provincial Court (Small Claims) and enforced 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: September 2010.

Dispute Resolution Officer