



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 the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the tenants, the landlord and her witness.

Issues(s) to be Decided

The issues to be decided are whether the tenants entitled to a monetary order for compensation for loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 51, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began in June 2009 as a 6 month fixed term tenancy and converted to a month to month tenancy on December 1, 2009. The tenancy ended when the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property that cited the landlord was to have a close family member move into the rental unit.

The tenant testified that on May 13, 2010 he attended the residential property to see if any mail was there after they had moved out of the rental unit. He states that while there he saw a bald man moving boxes in to the unit from a car in the driveway.

The tenant states he spoke with the man who indicated that he was moving into the basement and he wanted to know what the landlord was like. The tenant testified they had a discussion during which a female who was helping him move in came around the corner.

The landlord testified that she had never let anyone move into the basement rental unit but rather that she moved into the unit and rented to upstairs to a new tenant. The tenant's witness confirmed that he moved into the upper part of the house officially as of May 15, 2010 but that he had been moving in boxes from May 12, 2010 onward. The witness testified that he is not bald nor had he shaved his head in the time period under dispute.

Analysis

Section 51 of the *Act* requires a landlord to pay a tenant an equivalent of double the monthly rent should the landlord fail to use the rental unit for the stated purpose when ending a tenancy for landlord's use.

When making a financial claim against a party in a tenancy agreement, the onus of proof is on the party making the claim. As such, in this case the burden falls to the tenant to show that the landlord had failed to use the rental unit for the stated purpose.

As the tenant has no evidence of who the party was that he spoke to on May 13, 2010 at the residential property and in light of both the landlord's and her witness's testimony, I find the tenant has failed to provide sufficient evidence to establish the landlord failed to use the rental unit for the stated purpose in the notice to end tenancy.

Conclusion

Based on the findings above, I dismiss the tenants' application in its entirety.

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 29, 2010.

Dispute Resolution Officer