

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the tenants seeking monetary compensation under section 51(2) of the *Act* which provides a remedy for tenants whose tenancy has been ended by Notice to End Tenancy for landlord use, and the landlord has not used the rental unit as stated on the notice. The tenants also sought to recover the filing fee for this proceeding.

Issues to be Decided

This matter requires a decision as to whether the tenants have proven that the landlord did not occupy the rental unit as stated on the Notice to End Tenancy.

Background and Evidence

This tenancy began on August 1, 2007 and ended on December 31, 2009 under the notice for landlord use. Rent was \$900 per month and the landlords held a security deposit of \$300. The deposit is not in dispute and the tenants were given the last month's rent free as required under section 51(1) of the *Act*.

During the hearing, the tenants gave evidence – supported with a copy of a letter from a neighbour of the rental unit – that the rental building had not been occupied by the landlord or any other person since the end of the tenancy. The letter stated that the writer walked past the rental building daily and that he had seen no sign of occupants from January 1, 2010 to October 1, 2010.

The tenants claim, therefore, monetary compensation in the equivalent of two month's rent available to aggrieved tenants under section 51(2) of the *Act* where landlords have not taking steps within a reasonable time or have not used the rental unit for the stated purpose for six months.

The landlord submitted late evidence to the branch and did not provide the tenants with copies in support of her assertion that she had occupied the rental unit since April 2010. Therefore, I permitted the landlord to make the submissions orally.

The landlord gave evidence that she had a property tax notice including the home owner grant which is only available to for owner occupied properties. As further evidence, she had a cable bill showing that she had paid cable in April and copy of the insurance policy sent to her individually at the address of the rental unit.

The landlord explained that, after preparations to do so, she had moved in to the rental unit on separating from her husband. She stated that it was possible for passersby not to have seen her as she was residing in the basement suite and kept blinds closed at all times. She said for a period, she had spent considerable time in Victoria attending to her daughter who was very ill and when she was working or babysitting she had left the house very early in the morning.

The landlord provided a witness who gave evidence that she lives about three blocks away from the rental building and had visited the landlord on a number of occasions in the basement suite since April 2010.

Analysis

Except for the landlord's error in failing to provide the tenants with a copy of her documentary evidence, I find that the landlord has demonstrated on the balance of probabilities that the rental unit was used as claimed on the Notice to End Tenancy.

While there was some time lag between the end of the tenancy and the landlord moving into the rental unit, I do not find it to be unreasonable in view of the fact that the landlords were going through a marital separation at the time and were attempting to determine which of them would occupy the rental home.

I find that the tenants have failed to prove that the landlords did not use the rental unit for the purpose stated on the notice to end tenancy.

Conclusion

The tenants' application is dismissed without leave to reapply.

October 19, 2010