



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

The tenants seek a monetary order for compensation for damage or loss and recovery of the filing fee. Total sought including the filing fee is \$1,250.00.

Both parties attended the hearing and gave evidence under oath.

Issues(s) to be Decided

Are the tenants entitled to the Orders sought?

Background and Evidence

The tenants say that on May 11, 2010 they were given a notice to move from the rental unit by July 31, 2010 because the landlord needed the house for her own use. The tenants say they asked for written notice. The tenant says that when the landlord came to collect June's rent she asked if they could move sooner than July 31, 2010. The tenant says the landlord provided her with a "...mutual agreement paper..." and both tenants signed it. The tenants now say they did not notice that the mutual agreement was not a 2 month notice for Landlord's Use. The tenants submit that their agreement to move was not a mutual agreement even though they agree they signed the Mutual Agreement to end the tenancy.

The landlord submitted a Mutual Agreement to End the tenancy signed by the parties on May 11, 2010 ending the tenancy on July 31, 2010. The landlord submits that a 2

Month Notice to End Tenancy was never issued therefore compensation of one months' rent is not payable.

Analysis

Under Section 49 of the *Residential Tenancy Act*, a landlord may end a tenancy for landlord's use of property. In such a case a landlord would issue a 2 Month Notice to End Tenancy for Landlord's Use in which case the landlord would be responsible for paying compensation as provided for in Section 51 of the Act:

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.

However, in this case, the evidence shows that no 2 month Notice to End Tenancy was ever issued. The landlord prepared a Mutual Agreement to a End Tenancy on the May 11, 2010 and that agreement is signed by both parties agreeing to end the tenancy on July 31, 2010. While the tenant says she was not aware that the document was a Mutual Agreement to End Tenancy I find that the agreement is in the proper form as provided on the Residential Tenancy Branch website and it is clearly identified as a Mutual Agreement to End Tenancy.

I find that the parties mutually agreed to end this tenancy and compensation under Section 51 is therefore not payable.

The tenant's application is dismissed.