

DECISION

Dispute Codes MNDC, FF

Introduction

This is an application by the Tenant for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and the recovery of the filing fee from the Landlord.

Both parties attended by conference call and gave affirmed testimony.

Issues(s) to be Decided

Is the Tenant entitled to a monetary order for compensation?

Background and Evidence

The Tenant claims compensation under section 51 of the Act which provides as follows:

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.

51(2) In addition to the amount payable under subsection (1), if

51(2)(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

51(2)(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.

Sections 49(3) and 49(7) of the Act provide as follows:

49(3) A Landlord who is an individual may 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.

49(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act provides as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

52(a) be signed and dated by the Landlord or Tenant giving the notice,

52(b) give the address of the rental unit,

52(c) state the effective date of the notice,

52(d) except for a notice under section 45 (1) or (2) [Tenant's notice], state the grounds for ending the tenancy, and

52(e) when given by a Landlord, be in the approved form.

The property was up for sale prior to the mutual agreement to end a tenancy and as of the date of the hearing is still up for sale.

Analysis

The Tenant's right to compensation under section 51 is not triggered unless the Landlord gives a notice under section 49, which must be on the approved form pursuant to section 52. The Landlord testified that the only "notice" given to the Tenant was by way of a verbal agreement followed by an agreement in writing as shown in the provided Mutual Agreement to end a Tenancy in which the Landlord advised that the Tenant would have to move out. The Landlord did not give the

Tenant a notice in the approved form and therefore the Tenant's right to compensation was not triggered. The Tenant chose to vacate the rental unit pursuant to a mutual agreement, this does not give him the right to compensation. The Tenant's claim is dismissed.

Conclusion

The Tenant's application is dismissed.

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: December 08, 2010.

Dispute Resolution Officer