

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he received a 2 Month Notice to End Tenancy for Landlord Use of the Property on April 18, 2010 from the previous landlord of this property. He testified that he sent the current landlords a copy of his dispute resolution hearing package by registered mail on September 16, 2010. The landlords confirmed receiving the tenant's application. I am satisfied that the tenant served the dispute resolution hearing package in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award of twice the monthly rent because the landlord failed to use the property for the purpose identified in the 2 Month Notice he received to vacate the rental unit? Is the tenant entitled to recover his filing fee for this application?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on March 1, 2009. The tenant said that he continued the tenancy after the expiry of the initial fixed term. Monthly rent was set at \$1,900.00, payable on the first of each month. The tenant said that his \$950.00 security deposit has been returned to him.

After receiving the previous landlord's 2 Month Notice, the tenant vacated the rental premises as required before June 30, 2011.

The tenant applied for dispute resolution when he learned that the current landlord had advertised this rental property for sale on the real estate market. This action taken on August 3, 2010 was at odds with the declared reason for the previous landlord's issuance of the 2 Month Notice to End Tenancy for Landlord Use of the Property. The tenant vacated the rental unit because the previous landlord had indicated that the purchaser had requested the Notice so that the purchaser and his family could occupy the rental unit. The tenant applied for a monetary award of \$3,800.00, double his

monthly rent, in accordance with section 51(2) of the *Act*. He maintained that the landlord had not complied with section 49 of the *Act*.

The landlord provided undisputed written and oral testimony that he and his family moved into the rental unit on June 17, 2010 and continue to live in this rental unit. He confirmed that he had listed the property for sale at one point, but took it off the real estate market. Both parties agreed that the property is no longer listed for sale.

Analysis

The *Act* allows a landlord to end a tenancy when:

the landlord or a close family member of the landlord intends in good faith to occupy the rental unit;

Section 51 (2) of the *Act* provides that 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 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.

In this case, there is undisputed evidence that the landlord and his family occupied the tenant's former rental unit on June 17, 2010 and have remained in this living unit for over seven months since then. They continue to live there. They provided considerable written evidence to confirm that they reside in this living unit. Although they did list the property for sale at one point, they have lived in the tenant's former rental unit for a period in excess of the six months set out in section 51(2) of the *Act*.

As such, I dismiss the tenant's application for a monetary award without leave to reapply as he has not proven his claim that the landlords are in contravention of the *Act*.

Since the tenant has not been successful in his application, I dismiss his application to recover his filing fee from the landlords.

Conclusion

I dismiss the tenant's application without leave to reapply.

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*.