



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 an application by the tenant for money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began December 31, 2008 with monthly rent of \$825.00 and the tenant paid a security deposit of \$412.50.

The tenant testified that on April 2, 2010 he was given 2 months notice to end tenancy for landlords use of property. On April 8, 2010 the tenant gave the landlord 10 days notice to vacate and ended the tenancy on April 18, 2010. The tenant maintains that the property was not occupied by a family member of the landlords and the tenant has submitted an ad for rental of a house in the same area however the ad does not reflect a property address. The tenant is seeking 2 month's rent compensation.

The landlord testified that he had provided the tenant with 1 month's compensation per the Act. The landlord stated that when he took possession of the property that it was uninhabitable as the tenant left the property in need of extensive repairs and cleaning. The landlord spent the next two and one half months making the property ready for his daughter to move in to and upon completion the landlord's daughter took up residency on the property. The landlord stated that his daughter stayed living on the property until being transferred to Kelowna for work. The landlord stated that in November 2010 the landlord signed a lease agreement with new tenants; a copy of this agreement has been submitted into evidence.

Law

Residential Tenancy Act **Tenant's compensation: section 49 notice, 51** speaks to:

(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.

(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.

Residential Tenancy Policy **Guideline 2. Good Faith Requirement** speaks to:

The Residential Tenancy Act¹ and the Manufactured Home Park Tenancy Act² allow the landlord to end a tenancy agreement if the landlord intends, in specified instances to change the use of the residential unit or manufactured home park site.

The specified circumstances in the Residential Tenancy Act are as follows:

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

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have met the *Good Faith Requirement* as outlined in Residential Tenancy Policy Guideline 2.

When the landlord took possession of the property, the property was found to be uninhabitable due to the condition the property was left in by the tenant and this directly impacted the ability for the property to be occupied by the landlord's daughter within a reasonable period. Once the landlord completed the necessary repairs and clean-up of the property, the landlord's daughter took up residency on the property. The property then remained in the landlord's and or his daughter's possession for a minimum of six months.

The tenant has submitted an ad for rental of a property in the same area as the dispute address however this ad does not note a physical address or property owner's name. As the tenant has not adequately proven that the landlord did not act in good faith or that the landlord or an immediate family member of the landlord did not remain in possession of the property for a minimum of six months, I find that the tenant has not been successful in their application.

The tenant's application is hereby dismissed without leave to reapply.

As the tenant has not been successful in their application the tenant is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenant's application is hereby dismissed 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*.

Dated: March 8, 2011

Residential Tenancy Branch