



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking a monetary order for compensation under the Act and to recover the filing fee for the Application.

The Tenant and a former Agent for the Landlord appeared at the hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Although the Agent for the Landlord is not currently engaged by the Landlord, I find that at all times material to this Application the Agent was acting on behalf of the Landlord.

I note that the Landlord is living in another country, and therefore, issues of service must be addressed:

The Tenant testified she served the Agent for the Landlord with the Notice of Hearing and the Application, and that she also served the Landlord with these documents by registered mail to his place of business and by an email address.

The Agent for the Landlord testified that he sent copies of the Notice of Hearing and the Application to the Landlord by registered mail.

The Tenant and the Agent both testified that the Landlord had responded to them about this dispute via email.

Based on the above, I find that the Landlord has been sufficiently served with the Notice of Hearing and Application for the purposes of the legislation.

I also amend the style of cause of the Application to include the name of the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to compensation under the Act?

Background and Evidence

This tenancy began in July of 2009, with the parties entering into a written tenancy agreement. The monthly rent was \$2,100.00 and the rental unit was an apartment style condominium. During the tenancy, the Landlord was represented by an Agent, who appeared in this hearing. The Agent explained that he had worked for the Landlord until the rental unit was sold to another party. The Agent testified he was not involved in the sale of the rental unit.

In August of 2010, the Landlord instructed the Agent to provide the Tenant with a two month Notice to End Tenancy for the Landlord's use of the rental unit. Under section 49(4) of the Act, the Landlord was allowed to end the tenancy if he intended in good faith to occupy the rental unit. The Tenant was served with the Notice to End tenancy, which informed the Tenant that the Landlord, his spouse, or a close family member (as defined in the Act) were going to occupy the rental unit.

The Tenant was allowed under section 50 of the Act to give Notice to the Landlord and to move out earlier than the two month Notice required. The Tenant gave this Notice and vacated the rental unit on September 20, 2010.

The Tenant testified that the Landlord had a realtor showing the rental unit to prospective purchasers during her tenancy.

In October of 2010 the rental unit was sold by the Landlord to a new owner.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 51 of the Act, and I allow the claim of the Tenant.

Under section 51(2)(b) of the Act, the Landlord must use the rental unit for the stated purpose in the Notice for at least six months beginning within a reasonable period after the effective date of the Notice. Here there is no evidence the Landlord, or his spouse

or a close family member, ever moved into the rental unit. In fact, the evidence indicates the Landlord simply sold the rental unit shortly after the tenancy ended. Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, having found the Landlord breached this portion of the Act, I find and order that under section 51(2)(b) of the Act, the Landlord is required to pay the Tenant an amount equivalent to double the monthly rent under the tenancy agreement.

I grant and issue the Tenant a monetary order in the amount of **\$4,250.00**, comprised of \$4,200.00 for double the monthly rent and \$50.00 to recover the filing fee for the Application.

This order may be enforced in the Provincial Court (Small Claims division).

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 30, 2011.

Residential Tenancy Branch