



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for compensation pursuant to section 51 of the Residential Tenancy Act (the Act) in respect to a section 49 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") issued by the Landlord on January 30, 2010. The Notice caused the Tenants to vacate by the end of April 2010, the effective vacancy date listed on the Notice.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in documentary form, and to cross exam each other.

Issues(s) to be Decided

Are the Tenants entitled to obtain a monetary order for loss or damage under sections 51 and 67 of the Act and to recover the filing fee?

Background and Evidence

The tenancy began on May 16, 2009, and ended on April 30, 2010 after the Tenants were served a 2 Month Notice to End Tenancy under section 49 of the Act for Landlord's use of property. Monthly rent was \$1,650.00.

The Tenant testified that they were told they had to vacate the rental unit on that date due to the Landlord's plan sell the rental unit.

The Tenant testified that the rental unit was never sold and that the Landlord advertised the rental unit for rent on Craigslist, providing evidence of the listing, dated July 20, 2010.

The Tenant submitted that at the time the Landlord issued the Notice, the Landlord did not have a buyer for the rental unit. The Tenant further submitted that they gave the Landlord a FOB deposit of \$100.00, which was not returned at the end of the tenancy.

In response the Landlord stated that the rental unit has always been for sale, and that sometime after the advertisement, in July or August, 2010, he fired his agent who had advertized the rental unit.

Additionally, the Landlord submitted that the Tenants were not cooperating, that there were too many people living in the rental unit, that the rental unit was dirty and that he wanted the Tenants to just find another place to live.

In response, the Tenants denied the allegations of the Landlord.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Once the Tenants made an Application to dispute the Notice alleging it has been given in bad faith, the onus is on the Landlord to prove the Notice was issued for its stated purpose.

Section 51 of the Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) *A tenant who receives a notice to end 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 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.

I accept the testimony of the Tenants and find that they vacated the rental unit due to the Landlord's Notice, although the Landlord incorrectly filled out the Notice.

I accept the testimony of the Tenants and the Landlord that the property had not been sold at the time the Notice was issued. Therefore, all of the conditions for sale of the rental unit had not been satisfied and that the purchaser had not asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intended in good faith to occupy the rental unit.

I find the testimony of the Tenants to be credible and I accept that they paid an FOB deposit and have not been reimbursed.

I therefore find that the Tenants have established a total **monetary claim** of **\$3,450.00** comprised of \$3,300.00, representing the amount of \$1,650.00 monthly rent, doubled, the FOB deposit of \$100.00 and the \$50.00 fee paid by the Tenants for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants are granted a monetary order for **\$3,450.00**.

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: June 03, 2011.

Residential Tenancy Branch