



Dispute Resolution Services

Page: 1

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 Tenant to obtain a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of the hearing documents and evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Landlords taken the steps to accomplish the purpose for ending the Tenant's tenancy within a reasonable period after the effective date of the notice?
2. If so, have the Landlords used the rental unit for that stated purpose for at least six month beginning within a reasonable period after the effective date of the notice?
3. If not, has the Tenant met the burden of proof to obtain monetary compensation pursuant to section 51 (2) of the *Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began on December 1, 2009 and switched to a month to month tenancy after November 30, 2010. Rent was payable on the first of each month in the amount of \$2,369.00. The Tenant vacated the property by January 31, 2011 and was required to make repairs to the unit for the Landlords after that date.

The Landlord confirmed they did not occupy the rental unit and no family members occupied the unit. The rental unit was listed for sale January 31, 2011 and sold

sometime in April 2011. The Landlord was not able to provide testimony about the particulars of the sale such as when the offer to purchase was accepted. The Landlord offered to settle with the Tenant for compensation equal to one month's rent as the Tenant did not return the keys until February 24, 2011.

The Tenant testified that he was not negligent with returning the keys rather he was being used by the Landlords to stage the property for a quick sale. He did not want to settle and wished to proceed with his application in accordance with the Act.

Analysis

I have carefully considered the aforementioned and the relevant documentary evidence which included, among other things, a copy of the tenancy agreement, a copy of the real estate listing of the rental unit, e-mails between the parties, and copies of written statements from each party.

The evidence supports the Tenant was issued a 2 Month Notice to End Tenancy January 7, 2011 for the following two reasons:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse
- A family corporation owns the rental unit and it will be occupied by an individual who owns or whose close family members own all the voting shares

The effective date of the Notice is March 21, 2011, pursuant to section 53 of the Act. The property was listed for sale January 31, 2011, the same date the Tenant had advised he would be vacating the property. Neither the Landlords nor their close family member have moved into the property.

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

As per the aforementioned, I find the Tenant has met the burden of proof to be entitled to compensation under section 51(2) of the Act and I approve his claim in the amount of **\$4,738.00**.

The Tenant has been successful, therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$4,788.00** (\$4,738.00 + 50.00). This Order is legally binding and must be served upon the Respondent Landlords.

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 28, 2011.

Residential Tenancy Branch

