



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 tenants for compensation pursuant to section 51 of the *Residential Tenancy Act (the Act)* in respect to a section 49 Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") issued by the landlord's agent on May 21, 2010. The Notice caused the tenants to vacate by July 31, 2010, the effective date of the Notice.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the landlord breached the Act or tenancy agreement, entitling the tenants to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

I heard testimony that this tenancy began on April 1, 2009, monthly rent began at \$2,300.00 and ended with it being \$1,600.00. The tenants moved out on July 31, 2010.

The tenants' monetary claim is in the amount of \$3,200.00 on the basis that the landlord/owner did not take steps to carry out the purpose or reason within a reasonable time, which caused the 2 Month Notice to End Tenancy for Landlord's Use to be issued. The cause listed stated that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenants claim that the owner or his son never moved into the rental unit. The tenant stated that they have driven by the rental unit and there is no indication that anyone has moved in and there is no activity around the premises.

The tenant submitted that the property also has been monitored by the neighbours and that there appeared to be no activity suggesting any form of occupancy.

The tenants sent registered mail to the rental unit, and the mail was returned “unclaimed.”

The tenants submit that “occupancy” is defined as being in a full-time residency of the home.

The owner of the rental unit explained that he purchased the home from his mother earlier in 2010, with the intention that his son would occupy the rental unit while going to college. However, the owner’s son was not accepted into that university; as result, according to the owner, he and his family have been using the condo for themselves, at least once a month. Further the owner and his family intend to stay in the property for six weeks after the next holiday weekend.

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.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the tenants in this case, have the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

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.

Although the Residential Tenancy Act does not define the word, "occupy" is defined in Black's Law Dictionary 6th ed., 1990 at p.1079:

Occupy. To take or enter upon possession of, to hold possession of; to hold or keep for use; to possess; to tenant to take or hold possession".

Therefore, I do not find that the owner was required to reside in the rental unit full time to fulfill the requirement of occupying the rental unit. I find that, upon a balance of probabilities, the owner has met his burden of proving the rental unit has been used for the stated purpose listed on the Notice by the act of moving furniture into and using the rental unit at lease on a part time basis.

Conclusion

Due to the above, I therefore **dismiss** the tenants' application, without leave to reapply.

As I have dismissed the tenants' application, I decline to award the filing fee.

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: July 22, 2011.

Residential Tenancy Branch