



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 by the tenant for monetary compensation pursuant to section 51 of the Act. The tenant, the landlord and a witness for the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in December 2002. The rental unit was a suite in the landlord's house. In 2010 the monthly rent was \$750. On December 20, 2009 the landlord served the tenant a notice to end tenancy for landlord's use of property. The notice indicated that the reason for ending the tenancy was that the landlord intended to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. The tenant acted on the notice and vacated the suite on the effective date of March 31, 2010.

The evidence of the tenant was that the landlord did take steps to accomplish the stated purpose for ending the tenancy, and the tenant is therefore entitled to compensation equivalent to two months' rent.

The response of the landlord was as follows. When the landlord served the notice on the tenant, the landlord intended to make the suite available for a caregiver to help her with her disabled foster son. Additionally, the landlord's husband now needs help with caring for the property. Despite her best efforts, the landlord has not been able to find anyone yet. The landlord's witness testified that the landlord's foster son requires full-time, in-home care, but it is difficult to find someone in the landlord's community.

The landlord relied on the word “intends” on the notice, stating that she had every intention of converting the rental unit for a caregiver’s use. Further, the landlord argued that she has “taken steps” to accomplish the stated purpose by looking for someone to fill the position. Finally, the landlord submitted that because she intended for the caregiver to also assist the landlord’s husband in maintaining the property, the definition of “caretaker” could be extended to include the person she intends to hire.

Analysis

Section 51 of the Act states that if, within a reasonable time after the effective date of the notice, either (a) steps have not been taken to accomplish the stated purpose for ending the tenancy or (b) the rental unit is not used for that stated purpose for at least 6 months, then the landlord must pay the tenant an amount equivalent to double the monthly rent.

In this case, I find that the landlord did not use the rental unit for the stated purpose beginning within a reasonable time after March 31, 2010. The rental unit was still empty at the time of the hearing, nearly one and a half years after the effective date of the notice. I further find that a caregiver/caretaker of the landlord’s house and property does not meet the definition of “caretaker, manager or superintendent of the residential property.” The tenant is therefore entitled to the monetary compensation claimed of \$1500.

As the tenant’s application was successful, she is also entitled to recovery of her \$50 filing fee for the cost of her application.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$1550. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: August 16, 2011.

Residential Tenancy Branch