



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act for the equivalent of two months rent under section 51(2) when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued and the landlord failed to utilize the unit for the purpose stated in the Notice. Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to compensation because, after ending the tenancy for landlord's use the landlord failed to take steps to accomplish the stated purpose given for ending the tenancy within a reasonable period after the effective date of the notice or failed to use the property for the stated purpose for a period of at least 6 months.

The burden of proof is on the landlord to establish that after the Two-Month Notice was issued the rental unit was utilized for the stated purpose shown on the notice within a reasonable period and continuing for at least 6 months.

Background and Evidence

Submitted into evidence were copies of rental advertisements, a copy of the Two Month Notice to End Tenancy for Landlord's Use dated November 30, 2010 with Effective date of January 31, 2011, copies of communications and written testimony.

Both parties agreed that the tenancy was ended for landlord's use and that the landlord or a close relative then failed to occupy the unit within a reasonable period and continuing for at least 6 months.

The tenant testified that after they had vacated pursuant to the landlord's Two Month Notice to End Tenancy for Landlord's Use, they discovered that the landlord had advertised the unit for rent.

The landlord acknowledged that, although the intent was to occupy the unit, this goal was not possible for unforeseen circumstances and the landlord therefore found it necessary to find a tenant to rent the unit. The landlord stated that the rental was not put back on the market until May 15, 2011. The landlord testified that there was no bad faith involved.

Analysis:

Section 49(3) of the Act provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. All agreed that this was the stated purpose given for ending the tenancy. Section 51(2) of the Act states that in addition to the one month payable under section 51(1), the landlord must also pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if 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 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.

In this instance the landlord's stated intent was to move into the unit and the tenant accepted the termination of the tenancy on this basis without dispute. However, I find that the landlord did not comply with section 51(2)(a) by converting the unit into the landlord's family-member's primary residence within a reasonable time after ending the tenancy. I also find that the landlord then failed to utilize the unit for the stated purpose for a period of at least 6 months as required by section 51(2)(b). Whether or not this indicated any bad faith on the part of the landlord, I find that section 51 of the Act imposes a mandatory payment equivalent to double the monthly rent payable under the tenancy agreement when the landlord fails to fully comply with section 51(2) of the Act.

Given the above, I find that the tenant is entitled to receive \$1,440.00 comprised of double the monthly rent of \$695.00 and the \$50.00 paid for filing the application.

Conclusion

Based on the testimony and evidence, I hereby grant the tenant a monetary order in the amount of \$1,440.00 against the landlord. This Order must be served on the landlord in person or by registered mail and may be filed in the Provincial Court (Small Claims) 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: September 08, 2011.

Residential Tenancy Branch