



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This application was brought by the tenants seeking a monetary award in the equivalent of two months' rent on the grounds that the landlords did not use the rental unit for the purpose stated in a Notice to End Tenancy for landlord use.

Issue(s) to be Decided

This matter requires a decision on whether the landlords did not use the rental unit for the purpose stated on the Notice to End Tenancy and thus entitled the tenants to the two-month monetary award.

Background and Evidence

The tenancy on a small farm started on September 1, 2010 and ended on May 31, 2011 after the landlords served the tenants with a Notice to End Tenancy for landlord use on March 22, 2011. Rent was discounted to \$1,000 a month from \$1,100 in exchange for care of the landlords' horses.

During the hearing, the tenants gave evidence that they had cause to doubt the good faith of the Notice to End Tenancy as there had been some concern over their new dog prior to its service.

They stated that they frequently drove by the rental unit and had seen no sign that it was occupied. In addition, they stated that neighbours had advised them that they too had seen no signs of anyone living in the rental unit. While they were unable to contact the witnesses to give evidence during the hearing, I accept the submission that neighbours had not seen occupants in the rental unit.

The landlords stated that they had served the notice as they needed the rental unit for use by their young adult children. First, their daughter moved in on June 15, 2011 for the purpose of training a new horse with the guidance of her horsemanship coach who lived near the rental unit. The landlords submitted a corroborating letter from the coach who said she had personal knowledge that the landlords' daughter had stayed in the house from June to August 2011. The landlords stated that their daughter had quite intentionally kept a low profile as a young woman staying alone on the farm.

The landlords gave further evidence that their son who had been in South America moved into the rental unit on September 27, 2011 and remained in the rental unit at the time of the hearing.

The submitted another letter from a member of their church who stated that she had enquired of the landlords about renting the property for her son but she had been advised by them that it was only available for close family members at the time.

Written submissions from the landlords' son and daughter gave details of their temporary absences from the rental unit.

Analysis

Section 49 of the *Act* provides that landlords may issue a two-month Notice to End Tenancy for landlord use in circumstances, among others, in which the landlord requires use of the property for a close family member. Section 51(1) of the *Act* states that tenants who receive such notice are entitled to receive the equivalent of one month's rent which was done in the present matter.

Section 51(2) of the *Act* makes provision for the tenants to apply for the equivalent of an additional two months' rent if the rental unit is not used for the purpose stated on the Notice to End Tenancy.

In the present matter, I find that the rental unit was occupied by the landlords' daughter and son during the material times and remains occupied by their son. I find no breach of the *Act* in the fact that the occupancy of both was, at times, intermittent and I accept the evidence of the landlords that the property was rented to no other tenants during the material time.

I find that the landlords have used the rental property for the purpose stated on the Notice to End Tenancy, to accommodate close family members. Therefore, I find that the tenants are not entitled to the monetary award claimed under section 51(2) of the *Act*.

Conclusion

The application is dismissed without leave to reapply.

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: November 15, 2011.

Residential Tenancy Branch