



Dispute Resolution Services

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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 Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord's Mother on September 22, 2011, at the rental unit in the presence of both Tenants. The Landlord's Mother resides with the Landlord and has in the past accepted service of documents on behalf the Landlord. Based on the submissions of the Tenant I find the Landlord has been served the hearing documents on in accordance with section 90(a) of the *Act*.

The Tenant and his Witness appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord taken the steps to accomplish the stated purpose for ending the tenancy under section 49 of the *Residential Tenancy Act*?
2. If not, have the Tenants met the burden of proof to obtain a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant affirmed he had a tenancy with the Landlord that began on June 1, 1997 and was ended on April 30, 2011, in accordance with section 49 of the Act, for the purpose that the Landlord and her Mother would be occupying the rental unit. Rent was payable on the first of each month in the amount of \$1,125.30.

The Tenant confirmed that they had attended dispute resolution on March 24, 2011 to dispute the Notice to End Tenancy for landlord's use of the property however they were not successful and ordered to vacate the property. He confirmed they received

compensation equal to one month's rent as a result of being served the two month Notice.

The Tenant has made application today because he has proof that neither the Landlord nor her mother occupied the rental unit and that the Landlord rented the unit out to new tenants, for what he believes to be a higher rent.

The Witness affirmed that he has resided in the upstairs of the middle row house since August 2005 and that the rental unit in question is the unit next door to him. He is aware that these Tenants were required to move so that the Landlords could occupy the rental unit. He advised that he has never been personally introduced to the Landlord but has seen her on several occasions over the years and knows her to be of Asian descent. He confirms that after the Tenants vacated the unit some maintenance and repairs were conducted and then approximately one month later two females, one Caucasian and one Black, moved into the rental unit with a child. Then approximately one and half months ago the tenants changed again. The Witness confirmed that since the Tenants moved out he has never seen the Asian Landlord reside at this rental unit.

Analysis

Section 51 (2) of the 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.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by their witness and their evidence which included, among other things, photographs, copies of a previous rent cheque, and written submissions dated March 2011 and September 2011.

As per the aforementioned, I find the Landlord has not taken steps to accomplish the stated purpose for ending the tenancy under section 49. Accordingly I award the Tenants compensation pursuant to section 51(2) of the Act in the amount of **\$2,250.60** (2 x \$1,125.30).

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$2,250.60**. This Order is legally binding and must be served upon the Landlord.

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: December 22, 2011.

Residential Tenancy Branch