



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on May 10, 2010 and ended on October 1, 2011. Rent in the amount of \$625.00 was payable monthly. In a previous Decision, dated July 14, 2011, it was found that the Landlord’s had served the Tenants with a valid two month notice to end the tenancy for August 31, 2011 and that the Landlord held a good faith intention to move into the unit.. The Tenant states that subsequently and following their move out of the unit on October 1, 2011, the Landlord and its family did not move into the unit and that by January 2012, the unit was up for sale. The Tenant argues that the Landlord breached the Act by not moving into the unit and claims \$1,250.00.

The Landlord states that she did move into the unit and stayed there until February 2012. The Landlord states that the family, living in Alberta at the time, was to move into the unit with the Landlord and the children enrolled in the nearby school for September 2011. The Landlord states that as the Tenants were still in the unit at this time despite an order to move out of the unit, the family could not move into the unit and the children could not be enrolled in the school. Consequently the family remained in Alberta. The Landlord states that her employment ended unexpectedly at the end of August 2011 and that the Landlord remained at the unit to make renovations. The Landlord provided a record of employment indicating work between July 7 and September 10, 2011. The Landlord submits that as her husband could not obtain employment at the unit’s

location, and as the Landlord could also not obtain employment, the decision was made to sell the house. The Landlord states that she lived in the unit until mid February 2012. The Landlord submits that the unit has not been rented since the end of the tenancy.

The Tenant argues that the Landlord further aggravated the breach by various means set out in the Tenants submissions, including harassment and failure to comply with the Act. The Tenant provided the following oral evidence: During the tenancy the Landlord was supposed to install base board heaters but failed to do so. The hot water tank did not work and that following an inspection by the Landlord, it was never repaired further. As a result, the Tenants' supply of hot water was diminished. The Landlord harassed the Tenants in retaliation for the Tenants disputing the Landlord's right to end the tenancy. The Landlord would stare and make comments directed at the Tenants while the Landlord was in the upper part of the unit. The Landlord entered and started cleaning the Tenants storage area without the Tenants' permission. None of the Tenants' belongings were in the storage area which contained lots of the Landlord's belongings. A hydro inspection was carried out on the false premise of an electrical emergency. An unrelated police investigation occurred, initially implicating the Tenants.

The Landlord denies harassing the Tenants in any way. The Landlord states that the Tenants were not in a rush to have the heaters installed as they had use of a floor heater. The Landlord states that the repair person told the Landlord that repair to the heater were not necessary as the heater was in good working condition.

Analysis

Section 51(2) of the Act provides as follows:

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 of employment of the Landlord, I accept that the Landlord did move into the unit and did have the good faith intention to move the family into the unit but

that due to employment considerations and the act of the Tenants in remaining in the unit, the Landlord was unable to fulfill its intentions. As a result, I find that the Landlord did not breach this part of the Act. In considering the Tenants' evidence and argument for further damages, or breaches of the Act, given the finding that no breach occurred in relation to the end of the tenancy, I find that the Tenant is not entitled to further damages in relation to the end of the tenancy. I further find that the Tenant's remaining evidence is weak and that the Tenant has not met the burden required to establish a prima facie claim for any other damages. Accordingly, I dismiss the Tenants' application.

Conclusion

The Tenants' application is dismissed.

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: May 23, 2012.

Residential Tenancy Branch