



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 the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and an agent for the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenants entitled to a monetary order for compensation and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in September 2009 as a 1 year fixed term tenancy that converted to a month to month tenancy on September 1, 2010 with a monthly rent, at the end of the tenancy, of \$2,050.00 and that the rent was due on the 1st of each month with a security deposit of \$1,125.00 paid.

The parties also agree that the tenancy ended on May 31, 2012 resulting from the landlord's issuance on March 20, 2012 of a 2 Month Notice to End Tenancy for Landlord's Use of Property, citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The parties also agree that on April 6, 2012 a sale was completed on the rental unit and the landlord or a close family member of the landlord never did move in to the rental unit.

The landlord's agent testified that the landlord fully intended to have her mother move into the rental unit as it is in the same building as her own unit and wanted her mother

near here for the early stages of her pregnancy. The landlord submitted a note from her physician confirming the landlord is pregnant and due to have her child on January 12, 2013.

The landlord's agent went on to testify that the landlord also wanted to sell the unit and had put the unit on the market around the same time as issuing the Notice to the tenants but because units were staying on the market for several months the landlord did not believe her unit would sell in 16 days, which it ended up doing

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice if the landlord or the landlord's spouse or a close family member intend to occupy the rental unit or if the landlord enters into an agreement to sell the rental unit; all conditions of the sale have been satisfied; and the purchaser asks the landlord to give notice to end the tenancy.

Section 51(1) of the *Act* requires a landlord who issues a notice to end the tenancy under Section 49 to provide compensation in an amount equivalent to one month's rent. There was no evidence before me that the landlord had failed to comply with this section.

In addition Section 51(2) states that 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 the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount equivalent of double the monthly rent payable under the tenancy agreement.

Despite the landlord's agent's testimony of the circumstances in this case, there is no provision under the *Act* for the landlord to change the stated purpose for which the tenancy ends, other than withdrawing the original Notice to end the tenancy and issuing a new one for the correct purpose.

I find, by the testimony of both parties that the landlord failed to use the rental unit for the purpose stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property within a reasonable time after the effective date and since the landlord no longer owns the property will not be able to use it for the stated purpose for at least 6 months as is required under Section 51.

Conclusion

For the reasons noted above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$4,150.00** comprised of \$4,100.00 compensation for double the amount of rent and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: July 27, 2012.

Residential Tenancy Branch