



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This is an application filed by the Tenants for a monetary order for compensation pursuant to section 51 of the Residential Tenancy Act and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

It was clarified with both parties that the Tenant originally filed for dispute with C.K. the owner's agent. Both parties have confirmed that although C.K. dealt with daily issues regarding the Tenancy, the owners were properly the ones to attend and deal with this dispute. As such, the Tenant's Application with consent from both parties will be amended to reflect their names instead of the agent.

Issue(s) to be Decided

Is the Tenants entitled to a monetary order?

Background, Evidence and Analysis

Both parties agreed that the Tenancy ended on August 1, 2012 after the Tenant received a two month notice to end tenancy issued for Landlord's use of the property with the stated reason, "All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the unit." Both parties also agreed that monthly rent was \$1,300.00.

The Tenants state that the Landlord has not complied with the notice as no sale has been completed and the Landlords re-rented the unit in November of 2012 as shown by

the submitted copy of a rental ad for the dispute address. The Landlords have confirmed this.

The Landlords state that they tried to complete the sale in good faith, but because of an inability to complete a power of attorney (as both Owners live in two other countries) to enact the sale, the purchaser withdrew their offer and the sale was not completed. The Landlord has submitted a copy of a letter of intent by the purchaser to renovate once possession is achieved on August 1, 2012.

Section 51 of the Residential Tenancy Act states,

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) 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.

The Tenant has made an application under section 51 (2) of the Act.

It is clear based upon the evidence of both parties that the sale was never completed. The Landlords have admitted that purchase agreement was not signed as no power of attorney could be completed. Although the Landlord's state that all the conditions of the sale of the rental have been satisfied as per the notice served on the Tenants, I find that this cannot be so as no copy of the signed sales agreement was submitted. I find that the Landlord was premature in serving the notice upon the Tenants. The Landlord has also admitted based upon the Tenant's evidence that the unit was renovated and re-rented for November 2012 as per the rental ad submitted by the Tenant.

The Tenant's have established a claim under section 51 of the Act. The Tenant's are also entitled to recovery of the \$50.00 filing fee. The Tenant's are granted a monetary order for \$2,650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's are granted a monetary order for \$2,650.00.

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: February 15, 2013

Residential Tenancy Branch

