



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss.

Both parties attended the hearing by conference call and gave testimony. Neither party has submitted any documentary evidence. As both parties have attended the hearing and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served.

The Tenant confirmed in the hearing that the Landlord's Agent, M.C. is an agent for the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that a 2 month notice to end tenancy issued for Landlord's use of property dated October 15, 2010 was served on the Tenant. Both parties agreed that the stated effective date of the notice was January 31, 2011 and that the stated reason on the notice was, "The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member (father, mother, or child) of the Landlord or the Landlord's spouse." Both parties agreed that the Tenant vacated the rental unit in mid-February of 2011.

The Tenant seeks a monetary order for \$4,000.00 which is double the monthly rent (\$2,000.00) as compensation as the Landlord has not complied with the Act regarding the 2 month notice to end tenancy issued for Landlord's use of property.

The Landlord's Agent disputes the claim stating that the Landlord's moved into the rental unit shortly after the Tenant's vacated the rental unit in mid-February of 2011. The Landlord's Agent states that the Landlords then moved to Asia and listed the property for rental and re-rented the property on June 15, 2011.

Analysis

I am satisfied based upon the undisputed testimony of both parties that the Tenants were served with a 2 month notice to end tenancy issued for Landlord's use of property dated October 15, 2010 and that it was properly served upon the Tenant.

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.

I find based upon the direct testimony of both parties that the Tenant made application on January 31, 2013. Both parties have confirmed in their direct testimony that the Tenants vacated the rental unit in mid-February of 2011. The Tenant's Application is within the effective limitation period of the Act.

Both parties have confirmed in their direct testimony that the Tenants vacated the rental unit in mid-February and that the Landlord's took possession and occupied the rental unit shortly thereafter. The Landlord's testimony states that they vacated the rental unit and moved to Asia and re-rented the unit on June 15, 2011. I find that this time period to be approximately 4 months (February 15, 2011 to June 15, 2011) after the Tenant's vacated the rental unit. Section 51 (2)(b) states that 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."**

I find that the Landlord's did not comply with the Act. Although the effective date of the notice is January 31, 2011, both parties agreed that the Tenants vacated the rental unit in mid-February. The Landlord's failed to comply with the Act and re-rented the unit approximately 4 months (June 15, 2011) after the Landlord obtained possession of the unit.

The Tenant has established a claim under Section 51 of the Act. The Tenant is granted a monetary order for \$4,000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$4,000.00.

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: April 25, 2013

Residential Tenancy Branch

