



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 one of the tenants and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenants are 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 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants provided a copy of a tenancy agreement signed by the parties on August 10, 2010 for a 2 year fixed term tenancy beginning on September 1, 2010 that converted to a month to month tenancy on September 1, 2012 for a monthly rent of \$2,100.00 due on the 1st of each month with a security deposit of \$1,050.00 and a pet damage deposit of \$800.00 paid.

The tenants submit that they had engaged the landlord in discussions around renewing the fixed term tenancy with a rent increase that would be comparable to a rent increase that is allowed under the *Act*, but the landlord wanted to increase the rent by 20%. When the tenants would not agree to this increase, they state, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenants provided a copy of the 2 Month Notice issued on August 27, 2012 with an effective date of November 1, 2012 citing the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenants also provided copies of online advertisements, some posted as early as October 7, 2012, trying to re-rent the rental unit for \$2,600.00 per month or a 23% increase in the rental amount.

The landlord testified that that she had intended to raise the main part of the house so that they could raise the ceiling height in the basement but that when they found out the cost they could not afford it.

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 has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

I accept, based on the documentary evidence and the testimony of both parties that the landlord issued a notice to end the tenancy under the provisions of Section 49.

Section 51(1) of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

Section 51(2) goes on to say that in addition to the compensation under Section 51(1) if steps are not 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 that stated purpose for at least 6 months beginning within a reasonable time after the effective date of the notice the landlord must pay the tenant an amount that is equivalent of double the monthly rent payable under the tenancy agreement.

Based on the testimony of the landlord that she had not determined the cost of raising the house prior to issuing the 2 Month Notice, I accept that she **may** have intended on completing this work, however compensation listed under Section 51(2) must be granted after the landlord has not completed what it is she said she would complete that required her to end the tenancy.

As, by her own testimony, she did not raise the house and now does not intend to do so. As such I find the landlord has failed to accomplish the stated purpose in the notice to end tenancy and the tenants are entitled to compensation allowed in Section 51(2).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$4,250.00** comprised of \$4,200.00 compensation 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: May 16, 2013

Residential Tenancy Branch

