



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The tenants apply to recover an amount equivalent to two months' rent, pursuant to s. 51 of the *Residential Tenancy Act* (the "Act") arguing that the landlord issued a two month Notice to End Tenancy for "landlord use of property" but that steps have not been taken to accomplish that stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or that the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

In either event, the *Act*, provides for a monetary penalty against the landlord in an amount equivalent to two months' rent.

At the start of the hearing it was disclosed that this arbitrator, while carrying on the practice of law some years ago, rented office space and provided legal services to a company founded and lead by the late Mr. H. S. D. (throughout this decision, names have been abbreviated for privacy purposes). Further, it was disclosed that this arbitrator had also provided significant legal services and was retained counsel for the tenant Ms. W's employer, a local government. The parties were made aware that if either side chose, a new arbitrator would be assigned to determine the dispute. Both sides declined the offer and expressed their consent to continue on with this hear and this arbitrator.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the landlord has violated s. 51 and that the two month monetary penalty has been activated?

Background and Evidence

The rental unit is a large three bedroom home. The tenancy started in October 2010 for a fixed term of one year, at a monthly rent of \$1800.00. The tenancy agreement was renewed for an addition year; to September 30, 2012, to continue after that as a month-to-month tenancy. The final monthly rent ended up being \$1884.60. The tenancy agreement shows the landlord to be "The Estate of H.S.D.."

Near the end of July 2012, Mr. McC., one of the executors of the will of the late Mr. H.S.D., issued to the tenants a two month Notice to End Tenancy dated July 27, 2012. The Notice stated that the landlord was "ESTATE OF H.S.D." and that the Notice was given because the rental units "will be occupied by the landlord or the landlord's spouse or a close family member (father, mother child) of the landlord or the landlord's spouse."

That reason is one of the very few reasons specifically permitted in the *Act* for a landlord to end a tenancy where a tenant has not given cause.

It appears the tenants did not dispute the Notice. They vacated on the September 30, 2012 effective date and received both the return of their deposits and the one month rent equivalent payment required of a landlord who gives a two month Notice to End Tenancy.

In or about April 2013 the tenants determined that no one had moved into the rental unit. They took some photographs depicting the inside of the home as being vacant. They obtained the signed statement of a retired neighbour directly across the street to the effect that no one had been living in the rental unit since the tenants left.

Analysis

TEXT

Conclusion

TEXT

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: June 13, 2013

Residential Tenancy Branch

