



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord did not participate in the conference call hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Tenant confirmed that they were seeking recovery of the filing fee. The Tenant indicates that the on-line application process to tick the claim boxes was difficult so the claim was put in the cover letter provided with the application.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The following are undisputed and relevant facts: The tenancy started on October 15, 2007 and ended on February 28, 2013. Rent of \$2,400.00 was payable monthly

pursuant to a signed tenancy agreement. The security deposit from the tenancy has been returned to the Tenant. The tenancy ended pursuant to a two month notice to end tenancy for landlord's use (the "Notice"). The reason for the Notice is stated to be for the occupation of the unit by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

On April 6, 2013 the Tenant discovered the unit was listed for sale online. The Tenant contacted the listing agent by telephone and without providing their identity made enquiries about the sale of the unit. The listing agent informed the Tenant that the listing was active but that it was a private sale by appointment only as the seller had to be careful due to tenancy issues. The Tenant provided copies of the listings indicating a sale price of \$874,000.00, an available market status, and a last update on April 4, 2013. The Tenant claims compensation of \$4,800.00.

The Landlord submitted a letter in response to the Tenant's claim indicating that the listing found online by the Tenant was an old listing from 2011 that, in error, had not been removed and that the Landlord has occupied the unit as a vacation residence since the end of the tenancy. The Landlord also provided a letter from the listing agent indicating that the unit was unintentionally left on the online site and that the unit was listed in 2011 for a sale price of \$849,000.00.

Analysis

Section 50 of the Act provides that where a tenant has received a notice to end tenancy for landlord's use of property

- (a) 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
- (b) if 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In considering the Landlord's evidentiary submissions, I note that there was no opportunity to question the Landlord or the listing agent on their submissions. I also take into account that the Tenant's evidence of discussion with the listing realtor has not been disputed other than to say that the agent never had a conversation with the Tenants. I accept the Tenant's undisputed evidence that the Tenant did not identify himself in his telephone conversation with the agent leaving the agent's evidence on this point to be of little to no value. I also take into account the greater listing price of the unit in 2013 from that of the listing price from 2011 as provided by the listing agent. As a result of overall consideration of the evidence before me and the above reasons, I find on a balance of probabilities that the Tenant has substantiated that the Landlord intended to sell the unit after the end of the tenancy and has acted contrary to the reasons provided for ending the tenancy. I find therefore that the Tenant is entitled to **\$4,800.00** as the equivalent of two month's rent payable under the tenancy.

As the Tenant's application has been successful, I find that the Tenant is also entitled to recovery of the filing fee for a total entitlement of **\$4,850.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$4,850.00**. If necessary, this order may be filed in the Small Claims Court and 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: August 29, 2013

Residential Tenancy Branch