



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on April 10, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began in March 2004. The tenancy ended on April 1, 2014 after the landlord gave the tenant a 2 month Notice to End Tenancy. The rent at the time the tenancy ended was \$700 per month payable in advance on first day of each month.

The two month Notice to End Tenancy dated January 27, 2014 alleges "the 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.

The tenants were told that the landlord's brother would be moving in. The tenants found alternative accommodation at a cost of \$191 per month. She testified the tenants paid \$198 in moving expenses.

The tenants testified that immediately after moving out they became aware the rental unit was up for rent. This was confirmed when the tenants saw it advertised in the local newspaper.

The relevant evidence of the landlord is as follows:

- She was a first time landlord and was not aware of the required procedures.
- After the tenants moved out she made extensive renovations to the rental property including the construction of a suite in the basement area.
- She used the downstairs basement suite to house Mexican workers who worked on her farm.
- It became apparent she did not need the upstairs rental unit to house her workers and thus it was re-rented for \$800 per month.
- The tenants were given ample time to move.
- The landlord submits she is using ½ of the house for her own use as it is being used to house her workers.

Analysis

The two month Notice to End Tenancy served by the landlord is based on section 49 of the Residential Tenancy Act which alleges that where the landlord who is an individual may end a tenancy if the landlord or close family member of the landlord intends in good faith to occupy the rental unit. The relevant sections provide as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

....

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the Residential Tenancy Act provides as follows:

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.

After carefully considering all of the evidence I determined the landlord has failed to take steps to accomplish the stated purpose within a reasonable time after the effective date of the Notice. Section 49(3) requires that the landlord or close family member occupy the rental unit. The landlord acknowledges she is not occupying the rental unit. It is not sufficient that she rent the rental unit to her farm workers. There is no evidence that a close family member as defined by section 49(1) of the rental unit is occupying the rental unit. The fact the landlord has converted the rental unit into two suites is not a defense the tenants' claims.

As a result pursuant to section 51(2) of the Residential Tenancy Act I determined the tenants are entitled to the equivalent of double the monthly rent payable under the tenancy agreement or the sum of \$1400 ($\$700 \times 2 = \1400). I do not accept the submission of the tenant she is entitled to double the rent of her new rental unit.

I dismissed the claim for the cost of moving as there is no basis for this claim. The tenants have already received the benefit of the equivalent of one month rent as provided in section 51(1). The tenants are entitled to the equivalent of double the rent under section 51(2) but this does not give the tenants the right to further compensation for the cost of moving.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1400 plus the sum of \$50 in respect of the filing fee paid pursuant to section 49 for a total of \$1450.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: July 31, 2014

Residential Tenancy Branch

