



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for compensation under the Act.

The tenants attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenants testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on February 19, 2014, a Canada post tracking number was provided as evidence of service. The tenants stated the package was returned by Canada post because the landlord had refused to accept delivery of the package. Filed in evidence is a photo copy of the envelope which indicated the package was refused by the recipient.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act. Refusal to pick up the registered mail is not grounds for review.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to compensation under the Act?

Background and Evidence

The tenancy began November 1, 2012. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 and a pet damage deposit of

\$200.00 were paid by the tenants. The tenants stated that the landlord has returned their deposits.

The tenants testified that they were served with a two month notice to end tenancy for landlord's use of property (the "notice") issued on July 29, 2013. The tenants stated that they accepted the notice and moved from the rental unit on September 30, 2013. Filed in evidence is a copy of the notice, which supports the tenants' testimony.

The tenants testified that the reason stated in the notice was,

- All the condition for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchase or a close family member intents in good faith to occupy the rental unit.

The tenants testified that the landlord lied to them as they had not sold the rental unit. The tenants stated on October 31, 2013, when their daughter attend the premises on Halloween, they were told by the person who was occupying the premises that they were the new renters

The tenants testified that the premises now look empty and the property is currently listed for sale. The tenants stated that they seek compensation for double the monthly rent as the notice was not issued and used for the reasons stated in the notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Tenant's compensation: section 49 notice

- 51 (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 accept the undisputed testimony of the tenants that they vacated the premises on September 30, 2013, because the landlord had served them with a notice to end tenancy for landlord's use of property.

I further accept the undisputed testimony of the tenants that on October 31, 2013, they discovered that the property was not sold as stated in the notice and it was re-rented. As a result I find the landlord has breached the Act, when they failed to use the premises for the stated purpose in the notice.

Section 51(2)(b) provides that if a landlord does not comply with the Act the landlord must pay the tenants the equivalent of double the monthly rent payable under the tenancy agreement. The legislation does not provide any flexibility on this issue.

Therefore, I find the landlord has breached the Act, and the tenants are entitled to compensation of double the monthly rent under the terms of the tenancy agreement.

Conclusion

Having made the above findings, I must order, pursuant to section 51 and 67 of the Act, that the landlord pays the tenants the sum of **\$3,250.00**, the equivalent of double the monthly rent (\$1,600.00) and the \$50.00 filing fee.

The tenants are given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord 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: June 09, 2014

Residential Tenancy Branch

