



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 by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on September 22, 2014 to the only address the tenants had for the landlord which was the dispute address. Canada Post tracking numbers were provided by the tenants in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenants testified that this tenancy started on May 01, 2010 for an initial term of one year reverting then to a month to month tenancy. Rent for this unit was \$1,000.00 per month due on the first of each month.

JL testified that the landlord emailed LL on June 02, 2014 giving the tenants notice to vacate the unit for August 01, 2014 as the landlord was going to be moving back into the unit. JL testified that the landlord did not give the tenants a legal notice; however, the tenants acted in good faith and vacated the rental unit as directed on August 01, 2014.

JL testified that midway through August, 2014 they found an advertisement for the unit on Craigslist. The unit was now listed for \$1,800.00 per month, \$800.00 more per month than the tenants were paying. JL testified that they contacted the landlord with the Craigslist posting and a copy of the *Act* outlining the tenants' rights. The landlord emailed back on September 11, 2014 claiming no wrongdoing and stating that she was not now planning on living in the unit.

JL testified that the landlord appeared to have evicted the tenants to gain a financial advantage in raising the rent and had no intention of living in the rental unit. The tenants referred to an email from the landlord where the landlord has indicated she could not afford to live in the rental unit. The tenants seek compensation equivalent to two months' rent to an amount of \$2,000.00 and seek to recover their \$50.00 filing fee.

JL testified that they have tried to contact the landlord since to gain a new forwarding address from the landlord but the landlord has not responded so the tenants have sent all documentation pertaining to this hearing to the dispute address.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the tenants. Section 51 (1) of the Act which states, in part, that

(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.

Section 51(2) of the Act states:

(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.

However, the tenants were not served a Notice under s. 49 of the Act; S. 52 of the Act states that a Notice served by the landlord must be on an approved form. The landlord had only sent the tenants an email asking them to vacate the unit by August 01, 2014 as the landlord intended to move back in. At the time the tenants received this email the tenants had the choice to vacate the unit or stay in the unit as no legal Notice to End Tenancy had been served upon them; the tenants choose to vacate the unit.

Without the landlord serving the tenants with a legal Notice under s. 49 of the Act, even if the tenants acted in good faith, s. 51 of the Act does not apply. Consequently, the tenants' claim for compensation equal to two months' rent is dismissed.

As the tenants' claim has no merit the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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: April 23, 2015

Residential Tenancy Branch

