



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application (filed November 19, 2014): MNDC; FF

Landlords' application (filed May 15, 2015): MNDC

Introduction

This Hearing was convened to consider cross applications.

The Tenants seek compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The Landlords seek compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

It was determined that the parties duly served each other with their respective Notice of Hearing documents and documentary evidence.

Issues to be Decided

1. Have either party provided sufficient evidence to prove their claim for damage or loss?

Background and Evidence

Both parties gave a considerable amount of oral testimony and documentary evidence; however, I have recorded only the **relevant submissions and testimony** with respect to this Application.

The parties agreed on the following facts:

- This tenancy started in August, 1998.
- The tenancy ended as a result of a 2 month Notice to End Tenancy for Landlord's Use issued September 27, 2013, and effective November 30, 2013.

- The Notice gave the following reason for ending the tenancy: “The rental 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 did not dispute the Notice and were provided with compensation pursuant to the provisions of Section 51(1) of the Act.
- The Tenants moved out of the rental unit on November 9, 2013, pursuant to the provisions of Section 50 of the Act.
- Monthly rent at the end of the tenancy was \$1,580.00, due on the first day of each month.

The Tenant gave the following testimony:

The Tenant testified that the Landlord did not use the rental unit for the purpose provided on the Notice to End Tenancy. She testified that the rental unit was still vacant as at July 16, 2014. The Tenant also questioned the “good faith” intention of the Landlord because the Landlord had tried to increase the rent beyond the legislated amount and had started renovations within 10 days of the end of the tenancy. The Tenant stated that the Landlord moved into the rental unit, but only for one month.

The Tenants seek compensation in the equivalent amount of double the monthly rent, pursuant to the provisions of Section 51(2) of the Act.

The Landlord’s agent gave the following testimony:

The Landlord’s agent testified that the Landlord issued the Notice because he and his spouse had separated and were in the process of determining who would live in the rental unit and who would stay in their matrimonial home. She stated that renovations were required which took 4 – 6 weeks to complete. The Landlord’s agent testified that the Landlord “took possession” of the rental unit on December 1, 2013, and that the renovations were complete in mid-January, 2014. The Landlord moved into the rental unit on February 1, 2014.

The Landlord’s agent testified that the Landlord went on his annual trip to South Africa on February 27, 2014. While he was there, his spouse had a “medical event” which left her incapable of handling the rental property.

The Landlord’s agent stated that due to illness and changing circumstances, neither the Landlord nor his spouse moved back into the rental unit. She stated that in July, 2014, the rental unit was advertised for rent, but that the Landlord collected no rent for the rental unit until September, 2014, when it was finally re-rented.

The Landlord's agent stated that the Landlord is an elderly man and that he was under a lot of stress as a result of his personal circumstances. She stated that his stress was made worse by the Tenants' Application for compensation. She stated that the Tenants elicited the neighbourhood to spy on the Landlord, which caused even more stress to the Landlord. The Landlord seeks a monetary award in the amount of \$10,880.00, calculated as follows:

Administrative costs of preparing for dispute resolution	\$880.00
Personal stress	\$5,000.00
Neighbourhood embarrassment	<u>\$5,000.00</u>
TOTAL	\$10,880.00

Analysis

The Tenants' Application

The Tenants seek compensation under the provisions of Section 51(2) of the Act, which provides:

- 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.

The Tenants did not dispute the Notice to End Tenancy and chose to move out and accept the compensation granted under Section 51(1) of the Act. Pursuant to the provisions of Section 49.1(5) of the Act, the time to dispute the Notice on the Landlord's "good faith" intentions was within 15 days of receipt of the Notice.

Black's Legal Dictionary defines "occupy" as follows, in part: "To take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession". In other words, there is no requirement for a landlord to live in the rental unit in order to "occupy" it. I accept that the rental unit was not rented out until 10 months after the tenancy ended. I find that the Landlord kept the rental unit for his own use and that there is insufficient evidence that the rental

unit was not used for the purpose stated on the Notice for a period of at least six months from the effective date of the Notice.

Therefore, the Tenants' Application is dismissed.

The Landlord's Application

Section 67 of the Act provides:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

There is no provision in the Act for recovery of a party's costs for preparing for dispute resolution, except for recovery of the filing fees.

The Landlord seeks compensation for stress and embarrassment; however, if he suffered such loss, I find that it was not as a result of the Tenants failing to comply with the Act, regulations or tenancy agreement.

The Landlord's application is dismissed.

Conclusion

Both parties' Applications are dismissed 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: June 11, 2015

Residential Tenancy Branch

