



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order. Both parties participated in the conference call hearing with the tenants being represented by JB. Where I refer in this decision to the tenants in the singular form, it is JB to whom I refer.

There were originally 3 named applicants, with AW named as a third tenant. At the hearing, JB testified that AW was not named on the tenancy agreement because she was not responsible to pay rent. As AW did not pay rent and was not named on the tenancy agreement, I am unable to find that she was a tenant rather than a mere occupant and I therefore struck her name as an applicant as I was unable to find that she had standing to bring this claim. The style of cause reflects this amendment.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began on June 1, 2014 and was set to run for a fixed term expiring on June 1, 2015. Throughout the month of December the landlord had a number of conversations with the tenant advising that she was selling the property and asking whether the tenants would be willing to vacate the unit early. The landlord stated that the tenants agreed to leave and on or about December 29, the landlord gave the tenants a letter advising that they needed to vacate the unit by January 31, 2015. The tenants vacated the unit on or about January 1, 2015.

The tenants were paying \$800.00 per month in rent at the rental unit and the location to which they moved in January required them to pay \$1,200.00 per month in rent. The tenants seek to recover the difference between the two rental rates for the balance of the fixed term.

Analysis

The *Residential Tenancy Act* sets out the means by which tenancies are to end. If parties agree to end the tenancy, they should prepare a written mutual agreement to end tenancy. Apart from a mutual agreement, if a landlord wishes to end a tenancy prior to the end of a fixed term, they can only end the tenancy for cause or unpaid rent. Landlords wishing to end a month to month tenancy because purchasers of the unit wish to occupy the unit may serve the tenants with a 2 month notice to end tenancy. When landlords serve a 2 month notice to end tenancy, they are also required to give the tenants the equivalent of one month of rent. The purpose of this provision is to compensate tenants who have to incur moving expenses when they are forced to move through no fault of their own.

Although the tenants agreed to move from the unit, I find that they were left with little choice as they were unaware of their rights under the Act. I find that the landlord should not be able to escape her responsibility to compensate the tenants pursuant to the Act by failing to comply with her obligations under the Act. The tenants could have chosen to inform themselves of their rights prior to leaving the rental unit, but instead pursued that information after the tenancy ended. While the landlord should not have ended the tenancy midway through the fixed term, there is nothing I can do to remedy that at this point. However, I find that the tenants are entitled to recover the equivalent of one month's rent pursuant to section 51 of the Act as this is the amount to which they would have been entitled had the landlord served them with a proper notice. I therefore award the tenants \$800.00. As the tenants have been partially successful in their claim, I find they should recover the \$50.00 filing fee and I award them that amount for a total entitlement of \$850.00. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are awarded \$850.00.

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 29, 2015

Residential Tenancy Branch

