



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or tenancy agreement. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence

The tenants' testimony is as follows:

The tenancy began on May 1, 2013 and ended on September 20, 2014. The tenants were obligated to pay \$2500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1250.00 security deposit, which has been returned. The tenant stated that on August 18, 2014 the landlord gave her a Two Month Notice to End Tenancy for Landlords Use of Property.

The tenant stated that the landlord told her that she and her husband were splitting up and that he would be leaving their home and occupying the subject property. The tenant stated that at the move out inspection the landlord phoned her realtor and told her "its empty, you have someone interested right"? The tenant stated that the landlord advised that she was no longer splitting up and that her husband would stay in the house a couple of nights a week until the property is sold. The tenant stated that the landlords clearly gave the notice in bad faith and that she should be entitled to compensation.

The landlords' testimony is as follows:

The landlord stated that she and the tenant had a signed agreement that would allow the landlord to show the home to prospective buyers and that she wouldn't ask for any compensation, but was unable to find the document for this hearing. The landlord stated that her husband had to stay at the house a couple of times a week because of insurance purposes and could not leave it empty. The landlord stated that the tenant was aware the entire time that they were trying to sell the home, which they did in February 2015.

Analysis

The tenant is seeking compensation under Section 51 of the Act, the section reads 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.

In the landlords own testimony she stated that her husband continued to live in their personal residence and only spent a “couple of nights a week there for insurance reasons”. The landlord did not dispute the tenants claim that she contacted the realtor during the move out inspection and advised the home was empty and ready for potential buyers. Based on all of the above, the tenant has satisfied me that the landlord did not issue the notice in good faith and did not take steps to abide by the reason listed on the notice that “the rental unit will be occupied by the landlord or the landlord’s spouse or close family member (father, mother, or child) of the landlord or landlords spouse”. The tenant is entitled to the equivalent of two months’ rent as compensation for an award of \$5000.00.

The tenant is also entitled to the recovery of the \$50.00 filing fee.

As for the monetary order, I find that the tenant has established a claim for \$5050.00. I grant the tenant an order under section 67 for the balance due of \$5050.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary of \$5050.00

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: August 13, 2015

Residential Tenancy Branch

