



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the landlord resides on March 20, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenantst are entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on July 1, 2000. The tenancy ended on July 31, 2014. The rent at the time the tenancy ended was \$1700 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$750 at the start of the tenancy. The security deposit has been returned to the tenants.

The tenants were served with a two month Notice to End Tenancy dated May 31, 2014 that set the end of tenancy for July 31, 2014. The grounds of the Notice under section 49(5) are as follows:

49(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenants have filed a claim under section 51 of the Residential Tenancy Act which provides 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.

Analysis:

The tenants vacated the rental unit at the end of July 2014. The property was listed for rent on August 8, 2014 asking rent of \$3900 per month. There is another listing of the rental property asking for rent of \$3700 per month. It was subsequently listed for \$3100 per month. The landlord testified it was rented in October 2014 and continues to be rented.

Despite this evidence I accept the testimony of the landlord that at the time he purchased the rental unit he had an intention to move into the rental unit. This testimony is confirmed by a letter from his solicitor and real estate agent. Also he instructed his solicitor to put the house

into his name rather than the name of his holding company. Further I accept his testimony that he did not move in because his wife did not wish to move in for personal reasons.

However, the obligation to pay compensation under section 51(2) is not dependent on the purchaser's (present landlord's) intention. The obligation is triggered by whether steps have taken to accomplish the stated purpose within a reasonable period after the effective date or the notice or whether the rental unit has not been used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. Neither the respondent nor his family has moved into the rental property. It is not possible to move in as he has rented the property to someone else. I determined the tenants have establish a claim against the landlord for the equivalent of 2 months rent as the landlord failed to comply with section 51(2) of the Act..

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$3400 plus the sum of \$50 in respect of the filing fee paid for a total of \$3450.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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: August 06, 2015

Residential Tenancy Branch

