



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 to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on May 22, 2015. The Tenants filed seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by two Landlords and both Tenants. The application listed only one respondent Landlord; however, two Landlords were in attendance at the hearing and each of them submitted evidence. Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenants gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served the Landlords. The Landlords acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

The Landlords confirmed that they did not serve evidence in response to the Tenants' application.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to monetary compensation?

Background and Evidence

The parties entered into a written fixed term tenancy agreement that began on July 1, 2012 which switched to a month to month tenancy after June 30, 2013. Rent of \$3,500.00 was due on or before the first of each month. On or before July 1, 2012 the Tenants paid \$1,750.00 as the security deposit.

On approximately January 4, 2015 the Landlord called the Tenants and informed them that they need to move out of the rental unit by the end of March 2015. The Landlord told the Tenants that their parents were planning on moving into the rental unit.

The Tenants were not served an official notice to end tenancy.

The Tenants testified that they had always co-operated with their Landlords so they chose not to dispute having to move out. They stated that their Landlord offered them to remain in the rental unit rent free for the months of February and March 2015. However, they were able to find a new place to move into earlier and chose to vacate the rental unit as of February 15, 2015. No rent was paid for February 2015.

The Tenants received their \$1,750.00 back in March 2015. They now seek compensation equal to two months' rent because the Landlords' parents did not move into the rental unit. They submitted the rental unit was instead being prepared to be torn down or renovated.

The Landlords confirmed that their parents had initially wanted to move into the rental unit and then changed their minds. They argued that they should not have to give the Tenants more money as they offered the Tenants two months free rent and no rent was paid for February 2015.

The Landlords argued that no official eviction notices were served to the Tenants and they gave the Tenants three months' notice. They submitted that when they returned the security deposit to the Tenants they had agreed that would end these matters.

The Tenants stated that they may have agreed to end these matters when they received their security deposit back. However, they normally kept things informal with the Landlords, except for the written tenancy agreement.

Analysis

Section 49(3) of the Act provides, in part, that a landlord who is an individual may end a tenancy in respect of a rental unit by issuing a notice to end tenancy for the reason that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(1) of the Act stipulates that 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 provides that in addition to the amount payable under subsection (1), if 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 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.

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

[My emphasis added by bolding]

In this case the Tenants were not served a 2 Month Notice to end tenancy in the approved form as required by section 52(e) of the Act. Therefore, in absence of seeking dispute resolution to either dispute the verbal notice or to ensure they were issued a formal notice, I conclude the Tenants entered into a verbal agreement with their Landlords to move out no later than March 31, 2015. The Tenants accepted the

Landlord's offer of February and March 2015 rent free and then made a personal choice to move out of the rental unit by February 15, 2015.

Based on the above, I find the Tenants are not entitled monetary compensation equal to two month's rent, as they were not issued a Notice to end tenancy in accordance with sections 49 and 52 the *Act*. Accordingly, I dismiss the Tenants' application for \$7,000.00 compensation, without leave to reapply.

The Tenants were not successful with their application; therefore, I decline to award recovery of their filing fee.

Conclusion

The Tenants were not successful with their claim and their application was 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: November 02, 2015

Residential Tenancy Branch

