



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both tenants and one of the named landlords.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on May 7, 2014 for a month to month tenancy beginning on January 1, 2014 for a monthly rent of \$2,250.00 due on the 1st of each month with a security deposit of \$1,125.00 and a pet damage deposit of \$1,125.00 paid.

The tenants also submitted a copy of a Notice of Rent Increase raising the rent to \$2,306.25 effective February 1, 2015.

The parties agreed the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on June 12, 2015 with an effective vacancy date of August 31, 2015 citing the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenants submitted that in discussions with the landlord they were told that the landlord wanted to make renovations to the rental unit and that when completed the landlord intended to use the rental unit as rental accommodation on Airbnb.

The tenants submitted that they tried to get the landlord to agree to allow them to move out of the rental unit over the course of the summer, while the renovations were completed as they had their own vacation accommodation that they could use but the landlord did not agree.

The tenants did not dispute the 2 Month Notice but instead secured new rental accommodation on the same street and provided their notice to end the tenancy in 10 days as allowed under Section 50 of the *Act*. The parties agreed the tenancy ended on June 22, 2015.

The tenants submitted that to the best of their knowledge the landlord did not complete any renovations and the landlord has re-rented to the unit to new tenants effective September, 2015 at a much higher rental rate.

The tenants submitted that while they were at their vacation home on weekends over the course of the summer months they were living on the same street as the dispute address during the week days of July and August 2015. They stated that they saw no visible signs of any renovations being completed.

The landlord submitted that after the tenants moved out the landlord had the rental unit painted; floors replaced; kitchen cabinetry and counters replaced; and bathroom cabinetry and fixtures replaced. The landlord submitted several receipts for work and supplies to complete renovations.

The tenants submitted that the landlord manages many rental properties and that even though the address listed on the receipts for items was the dispute address there is no guarantee the landlord used the items or had the work done at the dispute address. The tenants submitted that the landlord should have submitted photographic evidence of the repairs and renovations that were made.

Analysis

Section 51(2) states that in addition, if steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable time after the effective date 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 must pay the tenant an amount that is the equivalent of double the amount of rent payable under the tenancy agreement.

Based on the testimony of both parties I find the stated purpose for ending the tenancy is that which was checked off on the 2 Month Notice to End Tenancy that listed that the landlord intended to complete repairs or renovations that required the rental unit to be vacant.

I note that ancillary reasons, such as a plan to rent out the rental unit as a vacation rental on Airbnb, were not identified on the 2 Month Notice to End Tenancy. As such, I find the landlord's only obligation under the *Act* was to complete these repairs/renovations.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me, the burden rests with the tenants to substantiate their claim that the landlord has failed to take steps to accomplish the stated purpose in the Notice to End Tenancy.

From the tenants own testimony I find that they are not sure the landlords completed any renovations at all. I find uncertainty of whether or not something occurred is not evidence that would corroborate that something did not occur.

I find the landlord has presented evidence that would appear to substantiate that renovations may have occurred but the tenants have based their claim on the fact that they did not see evidence, by living on the same street as the dispute address, any renovation activity occurred.

While I note the tenants were concerned that the landlord had not provided any photographic evidence to confirm the renovations occurred again I note that the burden was on the tenants to prove that the renovations did not occur, not on the landlord to prove that they did.

As such, I find the tenants have failed to provide sufficient evidence to establish the landlord has failed to take reasonable steps to accomplish the stated purpose of the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on June 12, 2015.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution seeking compensation pursuant to Section 52(1) and recovery of their filing fee.

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: April 05, 2016

Residential Tenancy Branch