



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$5215 for the equivalent of double the rent.
- b. An order for recover the cost of the filing fee.

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 on the landlord(s) as the representative of the landlord(s) has acknowledged service. 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 tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began approximately 15 years ago. The tenancy ended on August 31, 2015 after the landlord served a 2 month Notice to End Tenancy on the tenant. The rent is \$2557 per month payable on first day of each month at the time the tenancy ended. The security deposit paid by the tenant has been returned.

The 2 month Notice to End Tenancy provided as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenancy ended on August 31, 2015. The tenant was told that MJ would be moving in. MJ was represented to be the landlord. The tenant testified as follows:

- No one has moved into the rental unit and it remains vacant.
- The registered owner of the rental unit is AER and LSPH. She has been told that AER is the brother of MJ.

The representative of the landlords testified as follows:

- There has been no attempt to deceive or act in bad faith.
- Since the service of the 2 month Notice to End Tenancy MJ has spent her time in Asia with her elderly mother and her adult children.
- The rental unit has problems associated with it and it is uncertain what the landlord intends to do.
- She was unaware that the sister of the owner does not qualify as a close family member.

The tenant seeks an order for the equivalent of 2 months rent based on section 51(2) of the Residential Tenancy Act which provides as follows:

- 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.

Close family members is defined in section 49(1) as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

Analysis:

After carefully considering all of the evidence I determined the tenant is entitled to the order that she is seeking for the following reasons:

- MJ does not qualify as a close family member under the Act. Even if she moved into it is not sufficient to meet that requirement.
- In any event, no one has moved into the rental unit. It has been more than 10 months since the tenancy came to an end. I determined the landlord has not complied 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 \$5114 plus the sum of \$100 in respect of the filing fee paid for a total of \$5214.

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: July 08, 2016

Residential Tenancy Branch