



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the landlord's compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. As the claim for the Landlord's compliance may only be made in relation to an ongoing tenancy and as the tenancy ended I dismiss this claim.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started in approximately 2002 and ended on July 15, 2015. Rent of \$685.00 was payable monthly. The security deposit has already been dealt with. The Landlord served the Tenants with a 2 month notice to end tenancy for landlord's use dated March 29, 2015 with an effective date of June 1, 2015. The reason stated on the Notice is that the landlord or a close family member of the landlord will occupy the unit. The Tenant disputed the Notice and at a previous hearing the Parties mutually agreed to end the tenancy on the later date of July 15, 2016.

The Tenant states that since they moved out the unit has been vacant. The Tenant states that before the Landlord served the Notice the Landlord was seeking to significantly raise the rent on the Tenants. The Tenant claims compensation of \$1,470.00.

The Agent agrees that the unit has not been lived in by the Landlord. The Agent states that last year the Landlord's father passed away and left the Landlord with a high estate tax bill. The Agent states that the original plan was to occupy the unit long enough to make renovations and then re-rent the unit. The Agent states that because of the estate tax there have been no

renovations and no renting of the unit. The Agent states that the Landlord does “occupy” the unit from time to time to make minor renovations while the Landlord works out some way to deal with the property. The Agent argues that the Act does not require the physical occupation of the unit, that the Landlord has possession of the unit and that the Landlord has done nothing to exploit the Tenants. The Agent states that the Landlord has not been able to occupy the unit due to tax problems.

Analysis

Section 51(2) of the Act provides that 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. Although the term “occupy” is not defined in the Act, I consider that the term occupy when used in relation to the Landlord’s occupation of a rental unit to extend beyond mere possession and requires use of the unit as a residence. Based on the Landlord’s evidence that the rental unit has never been used as a residence for the Landlord and has been vacant since the end of the tenancy, I find that the Landlord has not occupied the unit as required under the Act and that the Tenant is therefore entitled to compensation of double the amount of rent payable. As the Tenant has been successful I find that the Tenant is also entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$1,470.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,470.00**. If necessary, this order may be filed in the Small Claims 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: October 03, 2016

Residential Tenancy Branch