



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to compensation under the Act?

Background and Evidence

The parties agreed that rent in the amount of \$2,350.00 was payable on the first of each month

The parties agreed that the tenant was served with a two month notice to end tenancy for landlord's use of property (the "Notice") issued on February 20, 2016. The effective vacancy date on the Notice was May 31, 2016.

The parties agreed the tenant accepted the notice and moved from the rental unit on May 10, 2016.

The reason stated in the Notice was the rental unit will be occupied by the landlord or the landlord's spouse or close family (father, mother, or child) of the landlord or the landlord's spouse.

The tenant testified that the landlord did not use the unit for the stated purpose in the Notice. The tenant stated that the landlord listed the property for sale around the middle of May 2016 and it was sold in June 2016.

The tenant testified that they moved from the rental unit early and should be entitled to the return of prorated rent from May 11, 2016 to May 31, 2016. The tenant stated they informed the landlord by phone that they were leaving.

The tenant acknowledged in the hearing that they are not entitled to moving costs as claimed in their application.

The landlord's agent testified that the landlord was intending to use the property for the intended purpose. The agent stated that the landlord discovered that the house next door had a large amount of people living there and that the police had been attending. The agent stated the landlord did not want to live next to that environment and sold the property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Tenant's compensation: section 49 notice

- 51 (2) In addition to the amount payable under subsection (1), if ...
(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.

[Reproduced as written.]

[Emphasis added.]

In this case, the landlord did not occupy the premise for at least 6 months. While I accept the landlord no longer wanted to occupy the premise after they discovered problems within their neighbourhood that does not release the landlord from their obligations under the Act. I find the landlord breached the Act when they failed to comply with the reason stated in the Notice.

Section 51(2)(b) of the Act states that if a landlord does not comply with section 51 of the Act the landlord must pay the tenant the equivalent of double the monthly rent payable under the tenancy agreement. The legislation does not provide any flexibility on this issue.

As I have found the landlord has breached the Act, I find the tenant is entitled to compensation equivalent of double the monthly rent. Therefore, I find the tenant is entitled to compensation in the amount of \$2,350.00 X2 = **4,700.00**.

The tenant further seeks return of prorated rent from May 11 to May 31, 2016.

Section 50 (1) states if a landlord gives a tenant notice to end a periodic tenancy under section 49 , the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

In this case, I find the tenant did not comply with the Act, as they did not give written notice to end the tenancy earlier to the landlord. I find the tenant is not entitled recover prorated rent. Therefore, I dismiss this portion of the tenant's claim.

I find that the tenant has established a total monetary claim of **\$4,800.00** comprised of the above described amount and the \$100.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant is granted a monetary order in the above amount.

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: December 05, 2016

Residential Tenancy Branch