



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 by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the application.

One of the tenants attended the hearing and represented the other tenant. An agent for the landlords also attended the hearing. The parties each gave affirmed testimony and were given the opportunity to question each other.

During the course of the hearing, the parties agreed that the landlords' evidentiary material has not been provided to the tenants. Where a party wishes to rely on any evidence at a hearing, copies of the same evidence must be provided to the other party. Therefore, I decline to consider any of the landlords' evidentiary material. All evidence of the tenants has been reviewed and is considered in this Decision, and no further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the monthly rent as a result of the landlords failing to use the rental unit for the purpose set out in a notice to end the tenancy for landlord's use of property?

Background and Evidence

The tenant testified that this fixed term tenancy began on December 1, 2013 and expired on November 30, 2014, thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,850.00 per month was payable on the 1st day of each month, which

was modified by email exchange between the parties to be payable on the 15th day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$925.00 which has been returned in full to the tenants, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The tenant further testified that the landlords ended the tenancy in an email, a copy of which has been provided. It is undated and states that one of the named landlords plans to move to the city to be with the landlord's daughter in July and stay in the rental unit for a number of years. It also states, "I would like to give you this termination notice, 2 months earlier ... I hope you will move to a new house before 30th of July, 2015."

The tenants moved out earlier than the end of July, 2015 in an effort to help out the landlords, and ultimately moved out on July 10, 2015. The tenants didn't pay rent for June or July. However, the tenants had told the landlords at the beginning of the tenancy that they wanted a long-term tenancy of about 7 years. The notice to end the tenancy was a big inconvenience. The tenant has lived in the neighbourhood for 15 years and leaving has been a challenge for the tenants' family.

The tenant has passed the rental unit several times since moving out and there have been 2 different families living there. The tenant believes the landlords have re-rented, and does not believe any of the landlords' family has moved in.

The landlords' agent testified that the landlords sent an email to the tenants on May 17, 2015 asking them to terminate the agreement, and they moved out at the end of July, 2015.

The landlord moved into the rental unit on August 20, 2015 and moved out again on September 23, 2015 due to health problems with the landlord's mother. The landlord went back to the Country where her mother lives to take care of her on September 23, 2015. In April, 2016 the landlord moved back into the rental unit with her brother.

Analysis

The *Residential Tenancy Act* requires a landlord to use the approved form when ending a tenancy. If the landlord doesn't do so, the notice is not effective.

49 (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(e) when given by a landlord, be in the approved form.

The *Act* also requires a landlord who gives a notice to end the tenancy for landlord's use of property to provide compensation equivalent to 1 month's rent to the tenants. Further, if the landlord does not use the rental property within a reasonable time after the end of the tenancy for at least 6 months, the landlord must compensate the tenant the equivalent of 2 months' rent, which is the subject of the application before me.

Tenant's compensation: section 49 notice

51 (1) 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.

(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.

In this case, the landlords did not use the approved form, but merely asked the tenants in an email to cooperate and they did. The tenants did not receive an effective notice to end the tenancy under Section 49. The landlords did not collect rent for the last month and more of the tenancy, so the tenants have received some compensation. However, the tenants did not have to move out, and because the tenants were not served with an effective notice to end the tenancy, the tenants are not entitled to compensation.

Since the tenants have not been successful with the application, the tenant's are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

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: January 18, 2017

Residential Tenancy Branch