



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

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- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentary evidence for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of two months' rent as claimed?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on December 1, 2015 for a six month term and thereafter on a month to month basis. The monthly rent was \$1700.00. At the outset of the tenancy the tenant provided a security deposit of \$850.00 which has been returned to him.

The tenant gave the following testimony:

On March 29, 2016 the landlord served the tenant with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by May 31, 2016. The ground for the Notice was that the rental unit would be occupied by the landlord or the landlord's close family member. The tenant moved out of the rental but later discovered that the landlord did not move into the rental unit; instead found a listing that the house was for sale as of July 5, 2016. The tenants submitted documents in support of their application, including a copy of the listing that shows the home has been sold.

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The landlord gave the following testimony:

The landlord testified he was intending to move in and did so for about a month but later realized the home would be too small for him and decided to sell the property. The landlord testified that he wasn't aware he had to use the property for the intended purpose for six months as noted in the Notice to End Tenancy.

Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (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.

The applicant seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. In the landlords own testimony he acknowledges and concedes he did not act in accordance with what the basis of the notice stated. I accept the landlords testimony that he was unaware of

the provision and that he meant no malice, however that does not relieve him of his responsibilities and obligations under the Act. The tenant has been successful in his application.

The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. I am satisfied that the tenant is entitled to $\$1700.00 \times 2 \text{ months} = \3400.00 plus the recovery of the $\$100.00$ filing fee for a total award of $\$3500.00$.

Conclusion

The tenant has established a claim for $\$3500.00$. I grant the tenant an order under section 67 for the balance due of $\$3500.00$. 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: January 25, 2017

Residential Tenancy Branch