



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, and authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in his notice to end tenancy (i.e., landlord's use of property)?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy commenced in September 1, 2012. Monthly rent was set at \$1,254.00, payable in advance on the first of each month. There was no written tenancy agreement, and no security deposit was ever paid.

The tenant testified to the following. The tenant moved out on May 1, 2016 as per a 2 Month Notice to End Tenancy ('2 Month Notice') issued to her by the landlord on February 3, 2016 for the landlord's own personal use. The tenant was given one month free rent when she moved out as required by the *Act*. Shortly after moving out, on June 10, 2016, the tenant noticed that the house had a "sold" sign. The tenant frequented the area as her daycare was nearby. The tenant spoke to a neighbour, who confirmed that the house was sold. The tenant then spoke to the landlord on June 27, 2016 who

also confirmed the house was sold. She advised the landlord that she was to be compensated the equivalent of double the monthly rent, but the landlord denied her request.

The landlord testified during the hearing that the house was listed on the market, on and off, for over three years with no success. The landlord testified that several realtors were involved, but the house had never sold. The landlord testified that he was renting the home that he was living in, and his landlord had listed the house for sale in late January 2016, and subsequently sold it in March. The landlord had intended to take occupancy of his own house, and that is why he served the 2 Month Notice on February 3, 2016.

The landlord maintains that he served the 2 Month Notice in good faith and did not know that the house would sell so quickly. He did not dispute the fact that the house did sell in June 2016, but could not confirm the exact possession date.

Analysis

Section 51(2) of the *Act* reads in part 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.

I have considered the testimony of both parties, and while the intention of the landlord may have been to occupy the house when he issued the 2 Month Notice, he did not. The landlord did not dispute the fact that the house was sold sometime in June 2016, less than two months after the effective date of the 2 Month Notice.

As required by Section 51(2) of the *Act*, as outlined above, the landlord must compensate the tenant double the monthly rent if the rental unit is not used for the stated purpose on the 2 Month Notice for at least 6 months. I find that the tenant has

demonstrated that she is entitled to a monetary Order of double the monthly rent pursuant to section 51(2) of the *Act* because the landlord has not used the rental unit for the stated purpose in the landlord's 2 Month Notice.

For the reasons outlined above, I find that the tenant is entitled to compensation as set out in section 51(2) of the *Act*. I therefore find that the tenant is entitled to the recovery of the equivalent of two month's rent. As the normal monthly rent was set at \$1,254.00, I find that the tenants are entitled to a monetary Order in the sum of \$2,508.00 as claimed.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$2,608.00, which includes an award equivalent to two month's rent at the rental unit plus the recovery of her filing fee.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with these Orders, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of the 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 26, 2017

Residential Tenancy Branch