



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 dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- authorization to recover their 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 tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with copies of the tenants' Application and evidence. The landlords did not submit any evidence for this hearing.

The tenants testified during the hearing that they had moved out on September 16, 2016 pursuant to the 2 Month Notice to End Tenancy for Landlord Use ('2 Month Notice') served to them by the landlord on August 19, 2016. In their application, the tenants are seeking financial compensation for the landlord's noncompliance with the *Act*, and for recovery of the filing fee. As the tenancy has now ended, the tenants' application for the landlord to comply with the *Act*, Regulation, and tenancy agreement is cancelled.

Issues(s) to be Decided

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

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy commenced on August 15, 2015. Monthly rent was set at \$1,600.00 per month, payable in advance on the first of each month. The landlord held a \$800.00 security deposit, which was returned at the end of the tenancy. The current landlord purchased the property in June of 2016.

The tenants testified to the following. The tenants moved out on September 16, 2016 as per a 2 Month Notice issued to them by the landlord on August 19, 2016. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child, or the parent or child of the individual's spouse)". A copy was included as part of the tenants' evidence.

The tenants are seeking compensation as they believe the landlord did not issue the 2 Month Notice in good faith, and they doubt the reason the landlord provided on the 2 Month Notice. The tenants submitted that the blinds are always closed at the house, and they do not believe that the landlord's parents have come from China. The tenants had no further submissions other than the fact that they had filed a previous application for dispute against this landlord in regards to this tenancy, and they were awarded monetary compensation by way of a decision dated October 20, 2016, of another arbitrator who made a finding that the landlord had contravened the *Act* (referenced on the first page of this decision). I note that the dispute the tenants referred to is not related to this claim, and was already heard by and decided by the arbitrator conducting that hearing.

The landlord testified during the hearing his parents had moved in as per the 2 Month Notice on January 4, 2016. He submitted that his 2 Month Notice was valid, as was the reason he provided on the Notice. The landlord maintains that he served the 2 Month Notice in good faith, and his parents had moved in within the timeline required by the *Act*.

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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.”

I have considered the testimony of both parties, and while the tenants questioned the reason the landlord provided on the 2 Month Notice, they did not provide sufficient evidence at this hearing that raises a question about the landlord's honesty. The only testimony provided by the tenants was that the landlord's blinds are always closed. As the landlord disputed the tenants' testimony by providing details of the new occupancy, and in the absence of any supporting evidence of the landlord's lack of good faith, I find that the tenants have failed to demonstrate that the landlord issued the 2 Month Notice for reasons other than those identified in that Notice. Accordingly, I am dismissing the tenants' application for monetary compensation.

As the filing fee is a discretionary award given to a successful party after a full hearing on its merits, I dismiss the tenants' application to recover the \$100.00 filing fee.

Conclusion

I dismiss the tenants' application for a monetary order, as well as the tenants' application to recover their filing fee.

The tenants' application for an order requiring the landlord to comply with the *Act* is cancelled as this tenancy ended some time ago.

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: February 2, 2017

Residential Tenancy Branch