



Dispute Resolution Services

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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 the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide sworn testimony and present evidence.

Preliminary and Procedural Matters – Service of Application and tenant's evidence package

The landlord testified that he did not receive the tenant's application or evidence package and only became aware of the hearing as the tenant notified the landlord by e-mail on February 4, 2017. The landlord submits he did not have sufficient time to respond to the application.

The tenants testified that the landlord was served with the application for dispute resolution including the Notice of hearing and evidence package by registered mail to the landlord's address for service. The tenants provided registered mail tracking numbers in support of service to both landlords named in the application. The tenants also provided a tracking history which confirms the items were unclaimed and returned to the sender. The tenants followed up by e-mail to ensure the landlord was aware of the upcoming hearing.

The landlord confirmed the address for service used by the tenants was correct.

Based on the above evidence, I am satisfied that the landlords were deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing

pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord having a copy of the tenants' application and evidence package. I declined to grant the landlord an adjournment to allow more time to respond to the application as I find it would unduly prejudice the tenants. The landlord not being aware or receiving the evidence package was due to the landlord's own neglect in failing to claim the registered mail.

Issues

Are the tenants entitled a monetary order for compensation for damage or loss?

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

Background & Evidence

The tenancy ended on July 31, 2016 after the landlord was successful in obtaining an order of possession on the grounds of 2 Month notice to end Tenancy. The grounds for issuing the Notice were that the landlord intended to move his parents into the rental unit after completing some renovations. The monthly rent was \$1500.00.

The tenants are claiming an amount equivalent to double the monthly rent as compensation for the landlord not using the rental property for his for the stated purpose in the 2 Month Notice.

In support of their claim the tenants submit that shortly after their tenancy ended, the landlord posted an advertisement on Facebook for rental of the unit at rent of \$2500.00 per month. The tenants submitted a copy of this ad dated August 16, 2016. The tenants also submitted some pictures of the rental unit obtained from their friends in response to the advertisement. The tenants allege the photos support that renovations were not completed as alleged by the landlord.

The landlord testified that the landlord's father did move into the rental unit and he has hydro and phone records to support such. The landlord spent 15 days renovating the unit before the landlord's father moved in. The father lived there for 1½ months but then due to a change in his situation he had to move out. The landlord ended up re-renting the unit in October 2016.

Analysis

Section 51 (2) of the Act provides that if 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 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 find the landlord's own evidence supports a finding that the landlord did not use the rental unit for the stated purpose in the 2 Month notice for at least 6 months after the effective date of the notice. The landlord's father only lived in the rental unit for 1½ months. The landlord failed to accomplish the stated purpose for ending the tenancy which included the father moving in to the rental unit in addition to completing renovations.

I allow the tenants claim for an amount equivalent to double the monthly rent and award an amount of \$3000.00, which is double the monthly rent of \$1500.00. As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$3,100.00.

Conclusion

Pursuant to section 67 of the Act, I grant the tenants a Monetary Order in the amount of \$3,100.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: February 22, 2017

Residential Tenancy Branch

