



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 an application by the tenant for a monetary order for compensation for loss under the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant made this application on August 22, 2016. On January 02, 2017, the tenant amended the application to change the name of the respondent to the current owner of the rental property (NF). The respondent NF agreed that she received this notice of hearing in January 2017.

NF stated that the tenant made the application in August of 2016 and did not serve her the notice of hearing within the legislated time frame of three days. Section 59(3) of the *Residential Tenancy Act* states that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it or within a different period specified by the director.

The tenant stated that she did not have proper mailing and contact information for the respondent at the time she made the application for dispute resolution. The respondent NF purchased the property from the former landlord who served the tenant with a notice to end tenancy for landlord's use of property. Since the tenant did not have any interaction with the NF during or at the end of tenancy, I find it is reasonable to accept the tenant's testimony that she did not have proper contact information for the respondent and therefore was unable to serve NF within the 3 day timeframe.

The tenant testified that upon obtaining contact information for NF, she served NF with this notice of hearing on January 28, 2017. Since the hearing date is February 23, 2017, I find that NF had sufficient time to respond and submit evidence prior to this hearing.

Issues to be Decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started on June 01, 2014 and ended pursuant to a section 49 notice to end tenancy for landlord's use of property, dated March 28, 2016. The rental unit was one of two suites located in the lower level of the home. The upper floor was rented out separately as was the other suite on the lower level.

The landlord sold the unit and the new owner NF took possession on June 01, 2016. NF had requested the landlord to serve the tenant with a two month notice to end tenancy for landlord's use of property, as NF intended to move into the rental property. On March 28, 2016, the landlord served the tenant with the two month notice to end tenancy for landlord's use of property. The tenant did not dispute the notice and moved out on May 31, 2016. The tenant received compensation in the amount of one month's rent pursuant to a s.49 notice to end tenancy.

NF testified that shortly after taking possession of the rental property, she advertised the availability of the upstairs and downstairs suites to get an idea of the income the rental units would generate, in the rental market at that time. NF testified that she moved into the rental unit on July 01, 2016 and moved out on October 31, 2016 after occupying the rental unit for 5 months. NF agreed that the unit was available for rent after she moved out and a new tenant was found for November 15, 2016.

The tenant is seeking an amount equal to double the monthly rent as compensation from NF for not complying with the reason stated on the two month notice to end tenancy for landlord's use of property.

Analysis

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the purchaser NF intended in good faith to occupy the rental unit.

Based on the testimony of both parties, I find that NF occupied the rental unit for five months. Since the unit was not used for the stated purpose for a period of at least six months, I find that the landlord must pay the tenant \$2,800.00 which is the equivalent of double the monthly rent. The tenant has proven her case and is entitled to the filing fee of \$100.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the amount of \$2,900.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$2,900.00.**

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 23, 2017

Residential Tenancy Branch

