



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, O, OLC

Introduction

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

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served to the landlord the notice of hearing package in person on March 3, 2017. The tenant confirmed that no documentary evidence was submitted. The landlord stated that the tenant was served with the 2 page documentary evidence on March 23, 2017 by placing it in the mailbox. The tenant confirmed receipt of the documentary evidence. No issues regarding service were raised by either party. As both have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

At the outset it was clarified with both parties that the tenant had made an error selecting options for his application for dispute. Through the written details and the direct testimony of both parties, it was clarified that the tenant seeks a monetary claim for compensation under section 51 (2) (b) of the Act which states that the landlord failed to follow through on the reason provided for on 2 Month Notice issued by the landlord pursuant to section 49.

At the end of the hearing the tenant stated that he was in the process of moving and has provided a new mailing address for service of the decision. As such, the Residential Tenancy Branch File shall be updated to reflect the new mailing address.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation under the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary order for \$1,400.00 as compensation under section 51 (2) (b) of the Act.

Both parties confirmed that the landlord served the tenant with a 2 Month Notice to End Tenancy issued for Landlord's Use. The stated reason was

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 that individual's spouse).

The tenant claims that after he vacated the rental unit on September 1, 2016 the landlord failed to follow through on the 2 Month Notice for atleast 6 months. The tenant states that the landlord has re-rented the unit.

The landlord disputes this claim stating that after he took possession of the rental unit renovation/repairs were made and the landlord is occupying the space.

Analysis

The tenants raised paragraph 51(2) (b) in their submissions. Paragraph 51(2) (b) sets out that where a rental unit is not used for the state purpose for a period of at least six months the landlord must pay the tenant double the rent payable under the tenancy.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant relies upon his direct testimony that the landlord has re-rented the unit and has failed to occupy the premises as per the 2 Month Notice. The landlord has disputed this in his direct testimony that renovation/repairs were made and that the landlord now occupies the space. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The tenant has failed to provide sufficient evidence to satisfy me that the landlord has breached section 51 (2) (b) of the Act by re-renting the premises and failing to occupy the space. The tenant's monetary claim is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: March 30, 2017

Residential Tenancy Branch