



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Associated Property Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started in November 2001 and ended on July 31, 2016. The tenancy ended pursuant to a notice to end tenancy for landlord's use and the stated purpose of this notice was for the landlord or a family member to move into the unit. The effective date of the notice was July 31, 2016. The Tenants were paying rent of \$1,000.00 per month for the last year of the tenancy. The Agent for the second named Landlord, a property management agency, served the Tenant with the notice to end tenancy for landlord's use, no longer works for the Landlord, and should not have been named as a party to the dispute.

The Tenant states that something felt fishy with the Landlord's notice and that after moving out of the unit she and friends would separately drive by the unit on several occasions and it appeared that nobody was living in or had moved into the unit. The Tenant states that the neighbours also informed the Tenant that no person was seen moving anything into the unit. The Tenant states that after the end of the tenancy repeated online advertisements for the rental of the unit at a significantly higher rental rate were discovered by the Tenant. The Tenant provides a copy of one of those advertisements, noting a posting date of October 4, 2016. The Tenant claims \$2,000.00.

The Co-owner states that he is the son of the Landlord and that the original intention was for him to move into the unit to be with his girlfriend who lived in the same city as the rental unit. The Co-owner states that while he did not move furnishings into the unit he did stay at the unit for the first while making minor repairs. The co-owner states that the utilities were hooked up in the Co-owner's name. The Co-owner states that as a travel policy with his job changed and as his relationship ended he decided not to move into the unit. The Co-owner states that the unit was advertised and a new rental agreement was entered into with another tenant for rent of \$2,600.00 per month commencing November 20, 2016. The Landlord states that the primary reason for not moving into the unit was due to the change in travel policy with his employer that came into effect October 1, 2016. This policy did not allow the Co-owner to travel to work from the unit within the time required by the policy. The Co-owner states that he was aware of this upcoming policy change 6 months prior to it becoming effective. The Landlord provided no documentary evidence to support his oral evidence.

Analysis

Section 51(2) provides that if the rental unit is not used for the stated purpose used for ending the tenancy for at least 6 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. The evidence of each Party was equally plausible however I found the Co-owner's evidence

to be very convenient given the significant increase in rental income and I note that no documentary evidence was provided to support the Co-owner's evidence. For these reasons I prefer the Tenant's evidence and given the undisputed evidence that the unit was rented out within 4 months of the effective date of the notice, I find on a balance of probabilities that the Tenant has substantiated that the unit was not used by the Landlord for the reason stated on the notice. The Tenant is therefore entitled to the compensation claimed of \$2,000.00. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the \$100.00 filing fee for a total entitlement of \$2,100.00. As the second named Landlord is not working for the Landlord, I decline to add this name to the monetary order.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,100.00**. If necessary, this order may be filed in the Small Claims 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: April 19, 2017

Residential Tenancy Branch