



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested monetary compensation pursuant to section 51(2) of the *Residential Tenancy Act* and to recover the filing fee.

The hearing was conducted by teleconference on May 3, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation pursuant to section 51(2) of the *Residential Tenancy Act*?
2. Should the Tenants recover the filing fee paid?

Background and Evidence

The Tenant, R.E., testified on behalf of the Tenants.

Also introduced in evidence was a copy of the *Residential Tenancy Agreement* indicating the tenancy began September 1, 2010. Monthly rent was payable in the amount of \$650.00.

The Landlord issued a 2 Month Notice to end Tenancy for Landlord's Use of Property on September 12, 2016. The reasons cited on the Notice were that 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 spouse).

The Tenant confirmed that they moved from the rental property on October 31, 2016. He also confirmed that they paid rent for September 2016 but did not pay for October 2016, such that they received the compensation pursuant to section 51(1) of the *Act*.

The Tenant submitted that the Landlord did not use the rental unit for the stated purpose, as the Landlord demolished the property. He stated that to his knowledge the Landlord did not reside in the rental property at all. In support, the Tenant provided photos of the rental unit which confirmed the property was demolished.

The Tenant stated that the Landlord's son, D.D., moved into a recreational vehicle on the property and was a party to the demolition of the property.

In response, the Landlord's Articled Student, Y.L., stated that the Landlord inspected the rental unit after it was vacated and discovered that the rental unit was not habitable due to excessive smoke damage, unsafe wires, mold and rot. He further stated that they set about to renovate the property as D.D. intended to move into the rental property with his wife but when the extent of the damage to the unit became known the decision was made to demolish. He confirmed that D.D. lived in a recreational vehicle on the property during the attempted renovations and demolition.

Y.L. further confirmed that at no time did anyone live in the rental home after it was vacated by the Tenants as it was uninhabitable and has now been demolished. He stated that a new manufactured home is being installed in the property.

D.D. also testified on the Landlords' behalf. He stated that he intended to move into the rental home after it was renovated.

D.D. confirmed that they were not able to move into the home due to the condition of the home, nor was it able to be renovated as planned. He testified that the Tenants had removed the appliances, the cupboards doors, and the lights and it was so extensively

damaged from smoking and the existence of animal feces in the walls and flooring that it was uninhabitable.

D.D. further stated that approximately November 9 or 10, 2016 they applied for a permit to demolish the building. D.D. stated that he and his wife live in a recreational vehicle on the property, which he stated was well known by the Tenant.

D.D. further stated that at no time did they allow any other person to reside on the property or in the home.

D.D. stated that he is hoping to move into the manufactured home as soon as all the hook ups are complete. He stated that it is his intention to reside in the manufactured home with his wife.

Analysis

The Tenants apply for compensation pursuant to section 51(2) which reads as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

After consideration of the evidence before me, the testimony and submissions of the parties and on a balance of probabilities, I find as follows.

I find that the rental property was used for the stated purposes on the Notice. I find that the Landlord, D.D. and his wife have occupied the rental property as noted on the 2 Month Notice. While the Landlords were not able to live in the rental home, I accept their evidence that it was their intention to do so. I further accept their evidence that they were prohibited from doing so as a result of the condition of the rental unit. I further accept the Landlords' evidence that D.D. and his spouse have remained on the rental property in a recreational vehicle while the attempted renovation and demolition has occurred. I further accept their evidence that they will occupy a manufactured home on the property once that home is ready for occupation.

I therefore dismiss the Tenants' claim for compensation pursuant to section 51(2). As they have been unsuccessful I dismiss their claim for recovery of the filing fee.

Conclusion

The Tenants claim is dismissed. The Landlords used the property for the stated purpose on the Notice to End Tenancy.

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: May 5, 2017

Residential Tenancy Branch