



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on November 1, 2016 (the "Application"). The Tenant applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing on her own behalf. The Landlord attended the hearing on her own behalf and was assisted by a family member, L.E. All parties in attendance provided a solemn affirmation.

The Tenant confirmed that the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on November 3, 2016. The Tenant provided a copy of a Canada Post registered mail receipt in support. Pursuant to sections 89 and 90 of the *Act*, I find that the Tenant's Application package is deemed to have been received by the Landlord on November 8, 2016.

On behalf of the Landlord, L.E. testified the Tenant was served with documentary evidence in response to the Tenant's Application by registered mail on April 4, 2016, but that it was not collected by the Tenant. Pursuant to sections 88 and 90 of the *Act*, I find that the Landlord's documentary evidence is deemed to have been received by the Tenant on April 9, 2017.

All parties were represented at the hearing and were prepared to proceed. No further issues were raised with respect to service and receipt of the above documents. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues

Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed the tenancy ended on June 1, 2016. The Tenant had been served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 29, 2016 (the "2 Month Notice"), which was issued on the basis that the rental unit would be occupied by the Landlord or a close family member of the Landlord.

However, the end of the tenancy was negotiated during a hearing before an arbitrator on May 12, 2016, which was documented in a written decision of the same date. The file number of the previous hearing is included on the cover page for ease of reference.

In her Application – filed five months after the end of the tenancy – the Tenant claimed \$2,700.00 on the basis that the rental property has not been occupied by the Landlord or a close family member, as indicated on the 2 Month Notice. The Application states:

We were evicted from [the rental property]. We were given notice that [the Landlord] would be moving into the house. 6 months have passed, property remains vacant.

[Reproduced as written.]

The Tenant testified that she moved out of the rental property on June 1, 2016, as agreed, but that the rental property has not been occupied by the Landlord or a close family member of the Landlord and remains vacant.

On behalf of the Landlord, L.E. acknowledged that the Landlord has not moved into the rental property. She testified that while packing belongings on June 15, 2016, the Landlord fell and injured her arm. The Landlord submitted into evidence a copy of medical imaging results with the same date. L.E. advised that the Landlord can no longer drive as a result of her injury, and cannot move to the somewhat remote community. L.E. confirmed there is no intention to rent or sell the rental property, and

that some furniture has been moved in. L.E. testified further that the Landlord intends to move into the rental property and that eventually L.E. and the Landlord's son will move into the home.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Relying on section 51(2) of the *Act*, the Tenant sought compensation in the amount of \$2,700.00 on the basis that neither the Landlord nor a close family member has occupied the rental property, as indicated on the 2 Month Notice, even though the tenancy ended on June 1, 2016. Section 51(2) of the *Act* states:

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.

[Reproduced as written.]

As noted above, the stated purpose for ending the tenancy was to permit the Landlord or a close family member to occupy the rental property. It is important to point out that the *Act* uses the term “occupy”; it does not use the word “reside” or “live in”. Meaning must be given to the words actually used in the legislation. “Occupy” and “reside” have different meanings. Since the *Act* does not require the landlord to “reside” in the rental unit, whether the landlord actually resided or lived in the rental unit is not relevant. As for the meaning of “occupy”, the *Act* does not define the word “occupy” or “occupied” and I have turned to the meaning provided by Black’s Law Dictionary, which defines “occupy” as follows: “to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession.” Although the Landlord has not moved into the rental property as intended due to injury, I find the Landlord occupies the rental property in that she has taken possession and control of it, and has moved furniture into it.

I find the Tenant has provided insufficient evidence for me to conclude she is entitled to the relief sought. The Tenant’s Application 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: May 12, 2017

Residential Tenancy Branch