



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$1900.00.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on July 1, 2016 with a monthly rent of \$950.00, due on the first of each month.

The parties agree that on September 30, 2016 the landlord served the tenant with a two month Notice to End Tenancy for landlord use, which stated that the landlord was going to move into the rental unit.

The parties also agree that the tenant did not pay any rent for the months of September 2016 or October 2016, as the landlord believed that the tenant was allowed two months free rent when a Notice to End Tenancy was given for landlord use.

The applicant testified that even before she had vacated the rental unit, the landlord had changed his mind, and had advertised her rental unit for rent for after she moved out.

The applicant further testified that she asked the landlord if she could stay in the rental unit since he had changed his mind about moving into it, and he would not allow her to.

The applicant further testified that the landlord did re-rent the unit after she moved out, and therefore, she believes she is entitled to the equivalent of two months' rent as compensation, as required under the Residential Tenancy Act.

The landlord testified that he did give the tenant a two month Notice to End Tenancy for landlord use as he had planned on moving into the rental unit, however his son subsequently offered him a place to live and therefore he decided not to move into the rental unit.

The landlord further testified that since he was not moving into the rental unit he decided to rent it out again.

The landlord further testified that the tenant did ask if she could stay in the rental unit, however that was not something he was willing to allow, however he did offer to allow the tenant to move into his other rental unit that is adjoining, and offer that she declined.

In response to the landlord's testimony the tenant testified that she was not willing to move into the adjoining unit as the adjoining unit had had some water issues, and was not suitable in other ways as well.

Analysis

Section 51 of the Residential Tenancy Act states:

- 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.

In this case, since the landlord did not use the rental unit for the stated purpose for at least a six-month period, the tenant was entitled to the equivalent of one month's rent for having received the notice, and the equivalent of two months' rent for the landlords failure to comply with the reasons given for ending the tenancy.

Therefore the total amount of compensation to which the tenant is entitled is \$2850.00; however the landlord has already allowed the tenant to have two months free rent for a total of \$1900.00. That means the total amount of compensation that is still payable to the tenant is \$950.00.

Pursuant to sections 51 and 67 of the Residential Tenancy Act, I have allowed a total order of \$950.00.

Conclusion

I have issued a monetary order for the respondent to pay \$950.00 to the applicant.

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 17, 2017

Residential Tenancy Branch