



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC FF

Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for recovery of the filing fee for this application.

While the tenants attended the hearing by way of conference call, the landlord did not. I waited until 2:14 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants provided sworn, undisputed testimony that they had served the landlord with their application for dispute resolution hearing package ("Application") and evidence by way of registered mail on March 13, 2017. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence on March 18, 2017, five days after mailing.

The tenants testified during the hearing that they had moved out on December 31, 2016 pursuant to the 2 Month Notice to End Tenancy for Landlord Use ('2 Month Notice') served to them by the landlord on October 14, 2016. In their application, the tenants are seeking financial compensation for the landlord's noncompliance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Background and Evidence

This month-to-month tenancy began on November 1, 2006. Monthly rent was set at \$1,725.00, payable in advance on the first of each month. The landlord collected an \$862.50 security deposit, which was returned at the end of the tenancy.

The tenants testified to the following. The tenants moved out on December 31, 2016 as per a 2 Month Notice issued to them by the landlord on October 14, 2016. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give

this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit". A copy was included as part of the tenants' evidence.

The tenants are seeking compensation as they believe the landlord did not issue the 2 Month Notice in good faith, and the new owners did not use the rental unit for the purposes stated in the 2 Month Notice. The tenants submitted that although the sale of the home was completed in January of 2017, the property still appears vacant with no furniture inside the home. The tenants stated that the inside of the home is visible through the front door, and that there was a pile of mail on the floor. They testified that they had also received a letter from the utilities provider stating that the gas and electricity were being terminated. The tenants investigated by knocking on the front door on May 8, 2017, and the rooms appeared empty. The tenants testified that they had spoken to the neighbours on May 5, 2017, and they were informed that the house remained vacant. The tenants believed that the new owners intend to build a four storey building on the property per the surveyors who had attended on May 2, 2017.

Analysis

Section 51(2) of the *Act* reads in part as follows:

51 (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.

The tenants testified in this hearing that the new owner of the home has not used the home as indicated on the 2 Month Notice issued to them by the landlord. The question of the landlord's good faith is not applicable in this situation as the tenant did not make an application to dispute the 2 Month Notice. The applicable section in the *Act* that would apply to this situation would be whether the landlord (which can include both the past and present owner of the property) complied with section 51(2) of the *Act*. In this case, the tenants had moved out on the effective date of the 2 Month Notice, which was December 31, 2016, and I find it premature to make a finding that the landlord did not comply as six months have not passed. Accordingly, I am dismissing the tenants' application for monetary compensation in relation to the 2 Month Notice with leave to re-

apply. I also note that the landlord identified as the Respondent in this application is the former landlord, and no notice was provided to the current owner of this property.

The tenants' application for recovery of the filing fee is dismissed.

Conclusion

The tenants' application to obtain a monetary award pursuant to section 51(2) of the Act regarding the landlord's alleged failure to use the premises for the purpose stated in the 2 Month Notice is dismissed with leave to re-apply.

The tenants' application for recovery of the filing fee is dismissed.

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: June 1, 2017

Residential Tenancy Branch