



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$1000
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenant moved into the rental property in April 2011. The rent was \$1000 per month payable on first day of each month. The tenant(s) paid a security deposit of \$500 on at the start of the tenancy. The present landlord purchased the property in the spring of 2016.

On April 30, 2016 the landlord served a 2 month Notice to End tenancy setting the end of tenancy for June 30, 2016. The grounds set out in that Notice state "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's spouse)."

On May 26, 2016 the tenant gave the landlord a 10 day Notice that he was vacating the rental unit on June 5, 2016. He paid the rent for the 5 days in June. The landlord paid the tenant the equivalent of one month rent as required under section 51(1) of the Residential Tenancy Act.

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The tenancy ended on June 5, 2016. The tenant testified the landlord told him his (the landlord) brother was moving in.

The landlord testified as follows:

- He acknowledged he told the tenant his brother was moving in. His brother moved in immediately after the tenant vacated. However, his parents moved in on June 30, 2016 and remained in the rental unit for 4 months.
- His parents were on a 6 month tourist visa and they had to return. His parents are scheduled to visit him on July 15, 2017 for an extended visit.
- After his parents vacated the rental unit in November 2016 he used the rental unit for his family purposes. He set it up as a play area for his 7 year old daughter.
- In March 2017 he rented the rental unit for 3 months to a friend. The rental unit was rented for a short period of time as he needed to have it vacant for his parent's visit in July.
- This is the first house he has bought and he is not familiar with the Residential Tenancy laws and procedures.

The tenant submits the landlord failed to prove his testimony. The tenant testified he visited the rental property in the Fall of 2016 and there was a Caucasian person living in the basement. The landlord denies the a Caucasian person lived in the rental unit and suggest that person might have occupied a suite in the adjoining property.

Section 51 of the Residential Tenancy Act provides 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.

Analysis:

After carefully considering all of the evidence I determined the landlord complied with section 51(2). The landlord's testimony was credible and not prone to exaggeration. He freely admitted evidence that was contrary to his position. The tenant failed to present evidence to disprove the testimony of the landlord. I accept the landlord's parents moved into the rental unit at the end of June 2016 and vacated in November. I further accept the testimony that the landlord used the rental unit for family purposes after that until March 2017 when he rented it to a friend for three months. I determined the steps were taken to accomplish the stated purpose within a reasonable time after the effective date of the notice. The tenant gave early notice as he is entitled to do that he was leaving on June 5, 2017. It is not surprising the landlord's parents would not be able to move in immediately as the end of tenancy date was set for June 30, 2017. The landlord used the rental unit for the stated purpose for at least 6 months beginning within a reasonable time after the effective date of the notice.

As a result I ordered the application of the tenant be dismissed without leave to re-apply..

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 05, 2017

Residential Tenancy Branch