



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for compensation for loss under the Act pursuant to section 67 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing. The landlord confirmed receipt of the tenant's application for dispute resolution including the notice of hearing and evidence. The tenant confirmed receipt of the landlord's materials submitted for this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as a result of an improper end to this tenancy?

Background and Evidence

This tenancy began on October 21, 2015 as a month to month tenancy with a current rental amount of \$550.00 payable on the first day of the month. The landlord has returned the tenant's \$550.00 security deposit and he advised that he is now aware of the proper amount of a security deposit: 50% of a tenant's monthly rental amount.

The tenant provided a limited amount of testimony at this hearing. She stated several times, "I submitted all the evidence to prove that [the landlord] said the unit would be empty." The tenant explained that her application was based on the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use. She wrote in her application that she moved out of the rental unit on November 1, 2016 and that the effective date of the 2 Month Notice was November 30, 2016. At this hearing, the tenant confirmed that she did not pay rent for the month of October as compensation for the 2 Month Notice.

She wrote in her application, supported by the copy of the 2 Month Notice submitted that the 2 Month Notice form indicated that "The rental unit will be occupied by the landlord or the landlord's close family member". At this hearing, the tenant submitted that the landlord did not issue his 2 Month Notice in good faith. The tenant confirmed that she did not make an application prior to vacating the rental unit to dispute the 2 Month Notice.

The landlord testified that it was always his intention to have his mother live in the rental unit and that she lives there now, in accordance with his indication on the 2 Month Notice. At this hearing, the tenant did not dispute that the mother was living in the rental unit. The tenant claimed she is entitled to compensation pursuant to section 51 of the Act.

Analysis

Section 49 of the Act allows the end of a tenancy for landlord's use including when the property will be occupied by a close family member of the landlord. The tenant relies on section 51 of the Act that provides an outline for addressing a 2 Month Notice to End Tenancy for Landlord's Use after the tenant before and after the tenancy has ended. After the tenancy ends as a result of a 2 Month Notice, the following provisions of section 51(2) take effect:

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 tenant provided text correspondence between the tenant and the landlord that she supplied for this hearing. The text messages are dated September 25, 2016 by the tenant. During the conversation, the tenant asked the landlord why he was giving her a notice to end tenancy: construction as he had told her previously or occupation of the unit by his mother as was indicated on the notice. The landlord responds "there is no appropriate options I can choose from the list as construction is not directly to your room. My mother does want to keep it empty for a while so I picked that one."

The tenant relies on a statement by the landlord made prior to the issuance of the 2 Month Notice that he 'wanted the unit empty. She submits that this is evidence of a lack of good faith and seeks her remedy pursuant to section 51 of the Act. However, the tenant was confused in her submissions. The landlord is required to act in good faith in providing his 2 Month Notice. After the tenancy ends, the landlord is required to comply with section 51 which requires a landlord to use or take steps to use the property as stated in the 2 Month Notice within a reasonable period of time.

I find that the landlord was credible in his assertion that he had ultimately complied with the 2 Month Notice. The landlord issued the 2 Month Notice citing a close family member in the unit as his reason to vacate the tenant. Since the effective date of the 2 Month Notice, the landlord testified that he moved his mother into the rental unit. Before he did so, he completed some minor renovations. I accept his sworn and undisputed testimony at the hearing was that his mother resides in the rental unit. I accept his testimony that he took steps (by way of minor renovation) to use the property in accordance with the 2 Month Notice and is now using the property in accordance with the 2 Month Notice. Therefore, the tenant is not entitled to the equivalent of 2 months' rent.

As the tenant was unsuccessful in her application, I find the tenant is not entitled to recover her filing fee.

Conclusion

I dismiss the tenant's application in its entirety.

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 08, 2017

Residential Tenancy Branch