



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 tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing.

Issues

Are the tenants entitled a monetary order for compensation for damage or loss? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The tenancy began on September 1, 2014 and ended on December 1, 2016 following a 2 Month Notice to End Tenancy served to the tenants. The tenants did not dispute the Notice which was issued on the grounds that a landlord's family member, specifically the landlord's niece, was to move into the rental unit.

The tenants are claiming an amount equivalent to double the monthly rent as compensation due to their argument that a niece does not fall under the definition of a "close family member" under the Act.

The tenants are not disputing the fact that the landlord's niece has moved into the rental unit following the end of their tenancy.

The landlord submits that they were up front with the tenants in notifying them it was the landlord's niece that intended to move into the rental unit. The landlord does not dispute that a niece does not fall under the definition of a "close family member" under the Act.

Analysis

Section 51 (2) of the Act provides that if 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 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.

I find that there is no dispute that the landlord has moved his niece into the rental unit as intended by the issuance of the 2 Month Notice to End Tenancy. As per section 51 of the Act, the remedy for 2 month's compensation is only for cases where the landlord has not taken steps to accomplish the stated purpose for ending the tenancy. The tenants' recourse in this case would have been to file an application to dispute the 2 Month Notice on the grounds of a niece not qualifying as a "close family member" under the Act. Unfortunately, there is no recourse under the Act for the tenants after they accepted and vacated the rental unit based upon a 2 Month Notice that may not have been valid.

I dismiss the tenants claim for an amount equivalent to double the monthly rent without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

The tenants' 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: July 27, 2017

Residential Tenancy Branch