



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. Specifically, the tenant is seeking compensation in the amount of two month's rent due to the landlord failing to comply with the reason provided in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 1, 2016 (the "2 Month Notice"). The tenant is also seeking the recovery of the cost of the filing fee.

The tenant and an agent for the landlord (the "agent") attended the teleconference hearing. The parties provided affirmed testimony and presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

At the outset of the hearing, the parties agreed to replace the name of the landlord agent B.K. as respondent with the name of the landlord T.S.D. As a result, this amendment was made in accordance with section 64(3) of the *Act*.

Issue to be Decided

- Is the tenant entitled to any monetary compensation under the *Act*, and if so, in what amount?

Background and Evidence

Neither party provided a copy of the written tenancy agreement. The parties agreed that a month to month tenancy began on September 1, 2014 and ended on September 30, 2016 after the tenant received the 2 Month Notice from the landlord. The parties confirmed that the tenant had received compensation of one month's rent for having been issued a 2 Month Notice by the landlord.

The reason stated on the 2 Month Notice is as follows:

“The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse.”

[Reproduced as written]

The tenant submitted a letter from J.P. dated March 17, 2017 which reads in part that she has driven by the place and no one is living there since the tenant has moved out last fall. In addition J.P. writes that the rental unit “seems to be vacant” and provided a phone number. J.P. provided a phone number on the letter however the tenant requested for J.P. not to be contacted during the hearing. The tenant was advised that without J.P. being able to be cross-examined by the agent and to speak to the letter, the letter would be of limited weight as a result. The tenant confirmed his understanding and decided not to have J.P. brought into the hearing as a witness.

The tenant claims he drove by the rental unit every single day during December, January and February and that there were no light on and that on November 23, 2016 when there was snow, there were no tracks in the driveway to support that a vehicle had been in the driveway.

The agent testified that the rental unit has not been re-rented since issuing the 2 Month Notice and presented a hydro bill in evidence in the name of G.D. who the agent confirmed was the son of the landlord who issued the 2 Month Notice. The agent stated that the landlord’s son G.D. was only able to come on weekends to the rental unit and that the home was occupied by family only which the agent stated is supported by the hydro bill. The agent also testified that the landlord’s son G.D. continues to reside there whenever he is in town and that the rental unit has not been re-rented.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Firstly I have considered section 51 of the *Act* which states:

(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.

[My emphasis added]

In addition to the above, as the reason indicated on the 2 Month Notice stated “The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse” I have also considered the definition of the word “occupy”. I have referred to the Black’s Law Dictionary sixth edition for the legal meaning of occupy.

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

[My emphasis added]

There is no dispute that the landlord has not re-rented the rental unit to another tenant after issuing the tenant a 2 Month Notice. As a result, I find the landlord has met the definition of occupy as defined in the Black’s Law Dictionary as the landlord took possession back of the rental unit as of September 30, 2016 and has held possession of the premises without re-renting the rental unit. Black’s Law Dictionary does not define occupy as to reside or to live.

Therefore, I find that the tenant has provided insufficient evidence to support that the landlord has breached the *Act*, regulation or tenancy agreement which is the first test of the test for damages or loss. Given the above, the tenant’s application is **dismissed without leave to reapply** due to insufficient evidence.

I do not grant the tenant the recovery of the cost of the filing fee as a result.

Conclusion

The tenant’s claim fails and is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 24, 2017

Residential Tenancy Branch