



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF O

Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order pursuant to section 67 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- other unspecified relief.

Both the landlords and the tenants appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords acknowledged receiving the tenants' application for dispute resolution, and the tenants' evidentiary package by way of Canada Post Registered Mail. Pursuant to sections 88 & 89 of the *Act* the landlords are found to have been duly served with the documents and the tenants' application.

Issue(s) to be Decided

Are the tenants entitled to a monetary order?

Can the tenants recover the filing fee associated with the application?

Background and Evidence

Tenant, N.K. explained that this tenancy began in October 2011 and ended in June 2016 after the landlords issued a 2 Month Notice to End Tenancy based on the landlords' use of property on March 30, 2016. Rent was \$1,742.00 and a security deposit of \$850.00 collected at the outset of the tenancy was returned to the tenants following the conclusion of the tenancy.

The tenants said they were seeking a Monetary Order of \$3,484.00 based on section 51 of the *Act* which provides that a landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if a rental unit is not used for its stated purpose after a tenant has been issued a 2 Month Notice to End Tenancy.

During the course of the hearing the tenants stated that they were served with a 2 Month Notice by the landlords based on the fact that, “the rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother or child) or the landlord or the landlord’s spouse. The tenants explained that they learnt that the landlords had undertaken an extensive renovation following their departure from the suite, and the landlords had subsequently re-rented the unit to new tenants. As part of their evidentiary package the tenants submitted an online advertisement showing the rental unit as advertised for tenancy.

The landlord acknowledged that renovations were done to the apartment following the departure from the unit; however, they noted that the suite was in fact used personally by the landlords themselves following these renovations. Landlord, T.C., said that the unit was occupied by the landlords from June to August 2016. The landlords described that it was their intention to use the rental unit while they home was being renovated through the summer. They said that issues around commuting to work, along with the hassles of going back and forth between different communities led them to conclude that they were not getting as much use of the rental unit as they had anticipated.

The landlords continued by explaining that in late August 2016 the suite was briefly occupied by friends and was then rented on a short-term basis for a few weeks in September and October 2016. On November 15, 2016 the suite was rented to a new, longer term tenant.

Analysis

Section 51(1) of the *Act* states, “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.” Testimony was provided to the hearing by the tenants that landlords fulfilled this requirement of the *Act* and provided the tenants with free rent for May 2016.

The second portion of section 51 of the *Act* states, “In addition to the amount payable under subsection (1) [above], 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, 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 am satisfied based on the evidence before me and the testimony provided by the tenants that the landlords did not use the rental unit for the purpose stated in the 2 Month Notice to End Tenancy. During the hearing the landlords acknowledged that the suite was occupied by their family for the summer of 2016. While outside factors may have contributed to the family deciding that they no longer wished to occupy the rental unit, the fact remains that the tenants vacated the suite because of the issuance of a 2 Month Notice, and the landlords therefore had an obligation to use the rental suite for the purposes stated on the 2 Month Notice for at least 6 months. Furthermore, the landlords placed the rental unit with a short term rental agency in September and October, and then proceeded to re-rent the suite in November 2016. These actions are further indication that the suite was not used for the purpose stated on the 2 Month Notice.

Pursuant to section 51 of the *Act*, I find that the tenants are entitled to a monetary order in reflection to the landlords' violation of the *Act*.

As the tenants were successful in their application, they may recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenants favour in the amount of \$3,584.00 against the landlords. The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Item	<u>Amount</u>
Penalty for 2 month notice (2 x \$1,742.00)	\$3,484.00
Return of Filing Fee	100.00
Total =	\$3,584.00

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: August 30, 2017

Residential Tenancy Branch