



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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 \$1400
- 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 he resides on March 21, 2017. 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 tenancy began on December 1, 2014. The rent at the end of the tenancy was is \$700 per month payable on first day of each month. The tenant(s) paid a security deposit of \$375. The security deposit has been returned to the tenant.

On September 30, 2017 the landlord served a 2 month Notice to End Tenancy on the Tenant that set the end of tenancy for November 30, 2017. The grounds set out in the Notice to End Tenancy are 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

The tenant did not dispute the Notice and she moved out on November 27, 2017. She received the equivalent of one month rent free as she is entitled under section 51(1) of the Act.

The tenant testified she kept a log and drove past or visited the property over 9 times from December 5, 2016 to March 2017. At to time did she lights on or vehicles in the driveway. No one answered the door when she knocked. She submits this is evidence that one can infer no one was living in the rental property. The tenant was not able to identify any conduct of the landlord prior to the date of the issuance of the Notice that would suggest the landlord was acting in bad faith. She submits the landlord is acting in bad faith on the basis that he or a close family member failed to move into the rental unit.

The landlord acknowledges that no one was residing in the rental property. He testified he lives in the house immediately beside the rental unit and that he needed the rental unit for the storage of equipment and documents. He is a dentist and needs a secure spot to store his files and other documents. He started using the rental unit for storage purpose shortly after the tenant moved. His house is approximately 40 feet away from the rental unit. He has not rented it out and does not intend to rent it out. He determined his basement was not an appropriate place for his files and equipment and he has guests from time to time who sleep in a room in the basement.

The tenant relies on section 51(2) of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

- 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.

Analysis:

The word “occupy” is not defined in the Residential Tenancy Act.

Neither party provided me with any authority that has considered the meaning of this word. I was not able to find any court decision which considered the meaning of “occupy” in the context of the Residential Tenancy Act.

Black’s Law Dictionary, 4th Edition defines “occupy” as follows:

“OCCUPY. To take or enter upon possession of; to hold possession; to hold or keep for use; to possess; to tenant; to do business in. *People v Roseberry*,

The term, under fire policy, implies use by some person according to purpose for which it is designed, and does not imply that some one shall remain in the building, all of the time without interruption but merely that there shall not be a cessation of occupancy for any considerable length of time.”

After careful consideration of the evidence and submissions presented by the parties I determined the tenant has failed to prove she is entitled to the equivalent of double the rent under section 51(2) for the following reasons:

- Under section 49 of the Act a landlord may end the tenancy if he or a close family member intends in good faith to “occupy” the rental property. It does not require that the landlord “reside” or live in the rental property. I determined word occupy extends to situations such as this where the landlord is not living in the rental unit. ..
- I accept the testimony of the landlord that he used the property for storage of documents and equipment commencing shortly after the Tenant vacated the rental unit. I determined that the use of the rental unit for storage is sufficient for the purpose of occupying the rental unit and it is not necessary that the landlord or close family member live in the rental unit as long as they are using it for a purpose. .
- The landlord has not re-rented the rental property. He has not received any rent since the tenant vacated.
- The tenant did not present evidence that she had a dispute with the landlord or that there was conduct that would raise the possibility of bad faith prior to the

service of the Notice to End Tenancy. The tenant relies on evidence that the landlord or close family member has not moved in.

Conclusion:

In conclusion I determined the tenant failed to prove that she is entitled to the claim for the equivalent of double the rent. As a result I dismissed the tenant's claim including the claim for the cost of the filing fee.

This decision is final and binding on the parties..

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 24, 2017

Residential Tenancy Branch