



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 \$1740
- 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 personally served on the landlord on June 6, 2017. With respect to each of the applicant's claims I find as follows:

The applicant's name as set out in the Application for Dispute Resolution is misspelled. I ordered the Application for Dispute Resolution to be amended to spell the applicant's name as set out in this decision.

Issue(s) 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, 2013. The rent at the time the tenancy ended was \$875 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$425 at the start of the tenancy.

The landlord purchased the rental property. There was a 2 bedroom suite upstairs and a 2 bedroom suite downstairs (where the tenant resided). He instructed the seller to give a 2 month Notice to End Tenancy to the seller. The seller's real estate agent gave a 2 month Notice to End Tenancy for both rental units. The grounds set out in the Notice to End Tenancy provided as follows:

- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit

The Notice was served on the Tenant on February 17, 2017 that set the end of tenancy for April 30, 2017. The Tenant did not know who the buyer was and chose not to dispute the Notice. She vacated at the end of April after receiving the equivalent on one month rent free as she is entitled to under the Act.

The tenant testified that some time in the middle of May she saw an advertisement offering to rent the rental unit she previously occupied for \$1200 which was significantly more rent than what she was paying.

The landlord submitted a written submission dated July 11, 2017 which he covered orally at the hearing. The landlord gave the following evidence:

- There many deficiencies with the basement suite which created a safety electrical panel, lack of heat vents, electrical problems, plumbing problems etc.
- He was not prepared to rent the rental unit given the safety risks
- There was a communication problem with the realtor who served the 2 month Notice to End Tenancy. It was always his intention to move to the upstairs unit (which he has done)
- He was never asked to sign a declaration for the bottom suite which was a critical error of the seller's real estate agent.
- I received possession on May 1, 2017 and immediately set to do the repairs. The work was properly done with permits.

- I listed the rental unit for rent around the middle of May. A secured a new tenant who was prepared to rent it effective June 1, 2017 even though he would not be able to take possession that early. The new tenant agreed to pay \$1200 a month which is under market value.
- He is a first time home buyer. The major error which caused this dispute was that the "Buyers Notice to Seller for Vacant Possession of a Tenanted Occupied Property" paperwork being duplicated and handed to both the up and down tenants in the house when they should have been given to the upstairs tenant only.

The tenant responded by testifying that had she been told of the landlord's intention to repair the rental unit to make it safer she would have agreed to move out on a temporary basis to allow the work to be completed and then she would move back in.

Analysis:

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.

I determined the tenant is entitled to the \$1740 claim she is making. The landlord has not moved in and has no intention to move into the rental unit. He has rented it out to a new tenant who has agreed to pay more the \$300 a month more in rent. The landlord failed to provide authority to establish that an arbitrator has the discretion to dismiss the tenant's claim in a situation such as this. The landlord has breached the requirements of the Act and the tenant is entitled to compensation.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1740 plus the sum of \$100 in respect of the filing fee paid for a total of \$1840.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 23, 2017

Residential Tenancy Branch