



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 tenants' 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent, RH (the "landlord") primarily spoke on behalf of the corporate landlord.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution and the parties' respective evidentiary materials. The landlord confirmed receipt of the tenant's materials. The tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenant's application and evidence and the tenant was duly served with the landlord's evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties provided undisputed testimony regarding the following facts. This tenancy began in January, 2008 and ended on June 30, 2015. The named corporate landlord is a property management company who managed the rental property on behalf of the

property owner (the "Owner") throughout the tenancy. At the end of the tenancy the rent was \$1,425.00 monthly.

The Owner instructed the corporate landlord by email, to issue a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") on April 13, 2015 as the property had been sold and the purchaser required vacant possession. The corporate landlord issued a 2 Month Notice dated April 13, 2015 indicating the reason for the notice is that, "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 unit".

This tenant moved out of the rental unit on June 30, 2015, in accordance with the 2 Month Notice. The landlord testified that they have no information on how the rental property was used after the tenancy ended.

The purchaser, AH testified that when he made the offer to purchase the property he intended to occupy the rental unit with his family. He said that before the offer was accepted by the Owner but prior to the contract of purchase and sale completing, he assigned the contract to a third party corporation. AH testified that neither he nor any close family member has ever occupied the rental unit.

The tenant gave undisputed evidence that the rental property was listed as a short-term rental property after the tenancy ended. The tenant submitted into written evidence print outs of the online listing for the property.

Analysis

Section 51(2) of the *Act* states 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.

In the 2 Month Notice the landlord indicated that the tenancy is ending as the conditions for sale have been satisfied and the purchaser or a close family member will occupy the rental unit. The landlord testified that they had no information of how the rental property was used after the tenancy ended. The purchaser testified that, while that was his original intent, circumstances changed and he assigned the contract of sale to a corporation that used the rental property as a short-term rental.

The landlord argues that they acted in good faith based on the information and instructions provided. However, good faith is not an element affecting the tenant's right to compensation under section 51 of the *Act*. The *Act* is clear in that a tenant is entitled to a monetary award if steps have not been taken to accomplish the stated purpose or the rental unit is not used for that stated purpose. The intention of the landlord when issuing the 2 Month Notice is not material to whether the tenant is entitled to compensation. In the case at hand the undisputed evidence provided is that the property was never occupied by the purchaser or a close family member. Therefore, the tenant is entitled to a monetary award of \$2,850.00, double the amount of the monthly rent.

As the tenant was successful in their application they may also recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,950.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 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: September 28, 2017

Residential Tenancy Branch