



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, OLC

Introduction

On April 28, 2017, the Tenant submitted an Application for Dispute Resolution asking for the Landlord comply with the Act, regulations or tenancy agreement; and for a monetary order for money owed or compensation for damage or loss under the Act, the regulations, or a tenancy agreement.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The Landlord was assisted by her son who acted as her agent and interpreter. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Landlord confirmed that they received the documentary evidence from the tenant. The Landlord testified that they sent their documentary evidence to the address the Tenant provided within her application.

The Tenant testified that she is residing in a location other than the address she provided in her application. She acknowledged that the Landlord sent their evidence to the address she provided but she never went to retrieve it.

I find that the Landlord's documentary evidence is deemed received by the Tenant pursuant to sections 89 and 90 of the Act. The Landlord's evidence will be considered in this hearing.

Issues to be Decided

- Is the Tenant entitled to compensation from the Landlord?

Background and Evidence

The parties testified that the tenancy began in March 2016, as a month to month tenancy. The parties testified that rent in the amount of \$1,000.00 was to be paid to the Landlord by the first day of each month and that the Tenant paid the Landlord a \$500.00 security deposit.

The Tenant testified that she received a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated July 30, 2016. The Tenant testified that she also received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 6, 2016.

The 2 Month Notice To End Tenancy For Landlord's Use Of Property had an effective date of October 1, 2016.

The parties participated in a hearing on September 30, 2017, where the Landlord was granted an order of possession due to non-payment of rent.

The Tenant testified that she moved out of the rental unit on October 18, 2016.

The Tenant testified that she drove past the rental property on January 8, 2017, and took a photograph of a for rent sign in the window of the unit she had rented. She testified that the sign was taken down approximately two weeks later.

The Tenant is seeking compensation in the amount of \$2,000.00 which is double the amount of the monthly rent that the Tenant was paying the Landlord. The Tenant submitted that the Landlord did not occupy the property for a period of 6 months.

The Tenant is also seeking compensation of \$500.00 for the loss of her possessions. She testified that a bailiff removed her possessions from the rental property and the possessions that did not fit into a large van were placed on the street. She testified that when she came to retrieve her possessions some had been stolen.

In response, the Landlord testified that the Tenant left the rental unit dirty and damaged and the Landlord decided to renovate the rental unit. The Landlord testified that the renovations were completed in May 2017.

The Landlord testified that they did not rent the unit out until July 16, 2017, which is nine months after the Tenant was removed from the rental unit.

The Landlord testified that they only had the for rent sign in the window for a couple of weeks. They testified that when people made inquiries about renting it they were informed that it would not be ready until May 2017.

The Landlord provided a copy of a tenancy agreement for the new Tenant that is dated July 2017.

Analysis

Section 51 (2) of the Act states that if 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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The effective date of the 2 Month Notice To End Tenancy For Landlord's Use Of Property was October 1, 2016. The Landlord was required to occupy the rental property for their own use for at least 6 months, which is April 1, 2017.

The 2 Month Notice indicates that the rental unit will be occupied by the Landlord or the Landlords close family member.

Black's Law dictionary 2nd Edition provides the following definition of "occupy":

"To hold in possession; to hold or keep for use".

I find that the word occupy does not mean that the Landlord must live in the rental unit.

There is insufficient evidence from the Tenant that the Landlord rented the unit to a new Tenant within 6 months after the effective date of the 2 Month Notice. The Landlord testified that they did not rent it out until after 6 months.

I find that the Landlord has not breached section 51 (2)(a) of the Act, and is not required to pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. The Tenant's claim for \$2,000.00 is dismissed.

With respect to the Tenant's claim for \$500.00 for a loss of her possessions, her testimony is that the bailiff removed her possessions and left some on the roadside. The Landlord hired the

bailiff because the Tenant refused to leave the rental unit after the Landlord obtained an order of possession.

The Tenant failed to provide an itemized list of what was lost and the value and replacement cost of each item. There is insufficient evidence provided by the Tenant to establish a loss, and the value of the loss. In addition, an applicant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. There is insufficient evidence that the Tenant took appropriate steps to retrieve her possessions in a timely manner. The Tenant's claim for compensation of \$500.00 is dismissed.

Conclusion

The Tenant has failed to establish that the Landlord has breached the Act, the regulations or the tenancy agreement. The Tenant's application seeking compensation from the Landlord is dismissed.

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: October 06, 2017

Residential Tenancy Branch