



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, O, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for landlord's use of property (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 12, 2017. Both parties also confirmed that the landlord served the tenants with her submitted documentary evidence via Canada Post Registered Mail on September 20, 2017. Neither party raised any issues with service of the hearing package of the submitted documentary evidence.

I accept the undisputed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset it was clarified with both parties that the tenants' application was made with errors. The tenants have confirmed that they are only applying for monetary compensation under section 51(2) of the Act which states that the landlord has failed to

comply with the reason set out in the 2 Month Notice under section 49 of the Act. Both parties acknowledged their understanding and the hearing proceeded.

Issue(s) to be Decided

Are the tenants' entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2011 on a fixed term tenancy ending on September 30, 2013 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated September 14, 2011. The monthly rent began at \$4,250.00 and ended at \$4,612.50 payable on the 1st day of each month. A security deposit of \$2,125.00 was paid.

The tenants seek a monetary claim of \$9,225.0 which consists of:

\$4,612.50 Monthly Rent X 2, compensation under section 51 (2)

The tenants provided affirmed testimony that prior to being served with the 2 Month Notice, the landlord attempted to increase the rental rate beyond the allowed percentage. Following this attempt, the tenants state that they were served with the 2 Month Notice dated June 22, 2016.

Both parties confirmed that the landlord served the tenant with the 2 Month Notice dated June 22, 2016. Both parties confirmed that the 2 Month Notice provided an effective end of tenancy date of August 31, 2016 and one reason listed as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenants provided affirmed testimony that the landlord failed to occupy the rental premises as per the listed reason on the notice. The tenants have submitted in support of this claim a copy of an online ad dated November 20, 2017 which shows an advertisement offering the rental premises for rent posted 10 days prior on November 10, 2017 which the tenants state is approximately 81 days after the end of their tenancy.

The tenants stated that the listed monthly rent was \$5,000.00. The tenants' challenged the landlord's good faith intent to occupy the rental unit.

The landlord disputes the tenants' claims stating that her son moved in and occupied the rental unit. The landlord stated that she was unable to provide sufficient evidence to support her claim that he son had occupied the rental premises. The landlord clarified that she had been attempting to consult and get estimates for a renovation/addition to the property to allow her family to occupy the property prior to ending the tenancy. The landlord provided both direct testimony and written submission in her documents stating that a renovation/addition was necessary to provide enough living space to her family, but upon completion of the consultation process she determined that the renovation/addition was beyond her means. The landlord provided affirmed testimony that at this point the property was advertised for rent.

Analysis

Section 51 (2) of the Residential Tenancy Act states in part that a tenant who receives a notice to end tenancy under section 49 of the Act is entitled to receive compensation equal to the equivalent of double the monthly rent payable under the tenancy agreement if the landlord has failed to take steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable time 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.

In this case, I accept the undisputed evidence of both parties that a 2 Month Notice dated June 22, 2016 was served upon the tenants with the stated reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Residential Tenancy Policy Guideline #2, Good Faith Requirement When Ending a Tenancy" sets out:

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrates that they do not have an ulterior motive for ending the tenancy.

The tenants have argued that the landlord has not in good faith complied with the 2 Month Notice issued. The landlord has relied primarily on her direct testimony that her son was occupying the premises following a renovation/addition of the rental property. The landlord determined occupying the rental property was not possible upon receiving the estimated budget costs for the renovation/addition. The tenants have provided undisputed evidence that the landlord sought to increase the rental rate beyond the allowed rate. The tenants have also provided undisputed evidence that they have deep roots within the community and are active in the neighborhood and as such, have claimed that the rental property has remained vacant. The tenants have also provided evidence that the landlord has posted the rental property for rent based upon an online ad. I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlord. The landlord has failed to provide sufficient evidence to satisfy me that the landlord was in good faith intending to occupy the rental property. As such, the tenants are entitled to a monetary claim of \$9,225.00 which is equal to double the monthly rent.

The tenants having been successful in their application are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$9,325.00.

This order must be served upon the landlord. 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: October 05, 2017

Residential Tenancy Branch