



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 tenant's 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
- recovery of the filing fee for this tenancy 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.

As both parties were in attendance I attempted to confirm service. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. I find that the landlord was duly served with the tenant's materials in accordance with sections 88 and 89 of the *Act*. The tenant testified that she had not received the landlord's materials and the landlord was uncertain of whether it was served. Pursuant to Rules of Procedure 3.17 and section 72 of the *Act*, I informed the parties that I would only consider those pieces of the landlord's evidence that the tenant could confirm having received on prior occasions.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

The parties agreed on the following facts. This month-to-month tenancy ended on May 31, 2016 when the tenant moved out of the rental unit in accordance with a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice"). The rent at the end of the tenancy was \$850.00.

The 2 Month Notice provides that the tenancy is being ended as "the rental unit will be occupied by the landlord or the landlord's close family member". The rental unit is a 1-bedroom basement suite in a detached home. The landlord occupies the upstairs suite.

The landlord testified that her adult daughter moved in to the rental suite after the tenant moved out. The landlord said that prior to moving downstairs the daughter lived in the upstairs unit and occupied the guest bedroom. The landlord said she moved in with the landlord when she lost her job in March, 2016. Before she moved into the rental building the daughter resided in another city with her father. The landlord said that no formal tenancy agreement was signed with the daughter but she paid rent in the amount of \$850.00 monthly.

The landlord said that after in or about July, 2016 she and her daughter agreed to have a family friend move into the rental unit and share the unit with the daughter. The landlord said that the friend had been seeking rental accommodation for some time but was unable to find anything. The landlord said that the friend split the rent of \$850.00 with her daughter. The landlord confirmed the rental suite is a one-bedroom and said that a second bedroom was moved into the back of the living room area which is divided by a staircase. The landlord said that her daughter would frequently come up to the main suite and so privacy and space was not at issue.

The landlord said that the daughter resided in the rental unit until the end of September, 2017. The friend remained in the rental unit until the end of October, 2017.

The tenant said that because the rental unit is a one-bedroom suite she does not believe that it could accommodate two tenants comfortably. The tenant said that her own partner would stay overnight on occasions but she questioned the privacy available for roommates. The tenant submitted into written evidence a letter from her partner dated September 15, 2016 which states that he entered the rental suite on August 31, 2016 and saw a large desk set up in the rental unit where the landlord claimed a second bed was placed.

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 rental unit would be occupied by the landlord or a close family member. The landlord testified that the landlord's daughter moved into the rental unit from the upstairs suite. The landlord testified that in addition to her daughter a family friend also moved in to the rental unit.

The tenant disputes the landlord's testimony. The parties confirm that the rental unit is a one-bedroom suite. The tenant says that because there is only one bedroom, it is unlikely that the landlord's daughter would move into the rental unit to share space with a family friend when she has a guest bedroom in the upstairs suite. The landlord said that the daughter frequently accessed the upstairs suite but she primarily resided in the basement.

Based on the evidence I find the tenant's version of events to be more credible than the landlord's. There is undisputed evidence that the rental unit is a one-bedroom suite and that the daughter freely accessed both the rental unit and the upstairs suite. The tenant submitted into written evidence a letter from the tenant's partner stating that he saw a large desk in the living room where the landlord testified a bed was placed. The landlord did not dispute the written evidence nor did she provide any explanation of why the tenant's partner would not have seen the second bed. I accept the tenant's testimony that the rental unit does not afford privacy for two roommates. The unit may be comfortable for a couple but more invasive for roommates. I accept the landlord's testimony that the daughter freely accessed the upstairs suite as well as the rental unit. I find it is more likely that the daughter, while utilizing the rental suite, primarily continued to reside in the upstairs suite. I accept the tenant's evidence that the stated reason for the tenancy to end was not carried out and the landlord's daughter did not

occupy the rental unit. Consequently, I find that the tenant is entitled to a monetary award the equivalent of 2 Month's rent pursuant to section 51.

As the tenant's application was successful I find that the tenant is entitled to recover the \$100.00 filing fee for the application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,800.00 which allows the tenant to recover the filing fee for this application and double the value of the monthly rent. 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: November 2, 2017

Residential Tenancy Branch