



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 \$2200
- 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 or around August 10, 2017. With respect to each of the applicant's claims I find as follows:

Issues 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 May 31, 2013. The rent was \$1100 per month payable on first day of each month. The tenant(s) paid a security deposit of \$500 at the start of the tenancy. It was returned to the tenant in September 2016.

The tenant filed an Application for Dispute Resolution and obtained a monetary order against the landlord in early January 2017. Shortly thereafter the landlord served a 2 month Notice to End Tenancy on the Tenant. The grounds in the Notice are as follows:

"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 tenant had doubts as to the good faith intention of the landlord. However, she did not to dispute the Notice and she vacated the rental unit on April 1, 2017.

The tenant seeks compensation for the equivalent of 2 months rent saying the landlord or close family member has not moved in based on the following evidence:

- The landlord's son has live in the upstairs portion of the rental unit and there would be no reason for him to move to the basement.
- A friend of hers visited the rental unit in May and texted her saying she saw stuff in the basement portion of the rental unit.
- She and her son visited the rental unit on July 20, 2017. When she knocked on the door K and her sister attended and acknowledged they were living there. While talking to these two occupants the landlord's son came from the upstairs portion and they engaged in a conversation.
- The landlord and the landlord's son are lying when they testified the landlord's son moved into the rental unit.

The landlord's son testified as follows:

- He is living in the downstairs portion of the rental unit. He produced a tenancy agreement that he has with his father saying he is paying rent of \$900 a month.
- His two cousins who have recently arrived from overseas are also living with him.
- He is 26 years of age. He intends to marry in the future and he and his wife will move in downstairs.
- The upstairs portion of the rental property is occupied by the landlord, his wife and their daughter. The wife and daughter operate separate businesses from the upstairs portion.

The tenants seeks compensation under 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.

Analysis:

The applicant has the burden of proof to present sufficient evidence to establish she is entitled to the claims that she is making.

After carefully considering all of the evidence I determined the applicant has failed to prove her claim. The landlord and his son attended the hearing and testified that the son is living in the basement along with his two cousins. He testified he moved in in late April after some renovation work was completed and he continues to live there. They produced a written tenancy agreement that indicates there is a tenancy between the son and the father.

I determined the evidence presented by the tenant is insufficient. No doubt there is animosity between the landlord and the applicant. It is possible the tenant might have been successful had she brought an application to set aside the 2 month Notice on the basis that the landlord's action were not in good faith. However, she chose not to do so and had the right to the equivalent of one month rent under section 51(1). The text message from her friend is of little assistance. The tenant's testified she visited the property on one occasion in July and she had a discussion with someone in the basement suite at the end of July. The landlord's son acknowledges his cousins are living in the same space as he.

In summary I determined the Tenant failed to prove that the landlord's son did not move into the basement suite within a reasonable time after the effective date of the Notice and that the rental unit has not been used for the stated purpose for at least 6 months beginning within a reasonable time after the effective date of the Notice.

As a result I dismissed the tenant's application.

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: November 21, 2017

Residential Tenancy Branch