



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, 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;
- an order that the landlord comply with the *Act*, regulations or tenancy agreement 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 confirmed service. The parties confirmed receipt of one another's evidence and the landlord confirmed receipt of the tenants' application for dispute resolution. I find that the parties were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Background and Evidence

This tenancy ended on July 31, 2016 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") issued by the landlord on May 5, 2016. The monthly rent at the end of the tenancy was \$950.00.

The 2 Month Notice provides the reason that the tenancy is ending as “the rental unit will be occupied by the landlord or the landlord’s close family member”. The tenants dispute that the landlord or a close family member moved into the rental unit.

The tenants testified that at a previous hearing before another arbitrator in February, 2017, the landlord testified that he is not residing in the rental unit. The tenants gave evidence that they currently live in a neighboring building and have not seen the lights on at the rental unit. In addition, the tenants submitted into written evidence a detailed account of their past dealings with the landlord.

The landlord testified that the rental unit is being used by him, his wife, and their children. The landlord said that the rental unit is not being used as a separate residence but it is being utilized on a regular basis by their family. The rental unit is a detached building on the same property as the landlord’s primary residence. The landlord gave evidence that the rental unit is being used on a daily basis by the landlord’s family.

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 tenants allege that the landlord is not using the rental unit for the stated purpose. They come to this conclusion based on testimony which they say was given at a previous Residential Tenancy Branch hearing, and their observation of the rental unit.

In addition the tenants submitted into written evidence a summary of the disputes they have engaged in with the landlord.

I find that there is insufficient evidence to establish that the landlord is not using the rental unit for the purposes set out in the 2 Month Notice. The tenants' evidence consists of conjecture and hearsay. Taken in its entirety I found the landlord's evidence to be reasonable, consistent and more convincing than the tenants'. Therefore, as I find that there is insufficient evidence to conclude that the landlord has not used the rental unit for the stated purpose, I dismiss the tenant's application.

Conclusion

The tenants' application is dismissed without leave to reapply.

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 30, 2017

Residential Tenancy Branch