



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord’s compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. In a Decision dated August 1, 2017 the Tenants were granted an order for substituted service of the application for dispute resolution and supporting documents to the Landlord by email. The documents included the notice of hearing. The Tenants attached these documents in an email sent to the Landlord’s email address on August 2, 2017. Given the evidence of email and the substituted service order I find that the Tenants have served the Landlord as allowed by Section 71 of the Act. The Tenants were given full opportunity to be heard, to present evidence and to make submissions. The Tenants confirmed that the tenancy had ended prior to the making of the application for dispute resolution. As the tenancy has ended and as the claim to cancel the notice and the claim for the Landlord’s compliance are only relevant to an ongoing tenancy I dismiss these claims.

Issue(s) to be Decided

Did the Landlord fail to act as stated on the notice to end tenancy?

Are the Tenants entitled to compensation and recovery of the filing fee?

Background and Evidence

The tenancy started on August 1, 2012 and ended on April 30, 2017. Rent of \$1,650.00 was payable each month during the tenancy. The Landlord had purchased the unit prior to the end of the tenancy and the Tenants remained in communication with their original landlord. After purchasing the rental unit the Landlord then proceeded to try to raise the Tenants' rent by several hundred dollars and the Tenants refused to agree to such a rent increase. The Landlord subsequently served two notices to end tenancy for landlord's use, both containing the reason that the Landlord intended to move into the unit. The Tenants disputed the first notice and as contained in a Decision dated November 7, 2016, the Tenants were successful in having that first notice cancelled. The Landlord then served the Tenants with the second two month notice to end tenancy for landlord's use (the "Notice"). Although the Tenants disputed this second Notice, as contained in a Decision dated January 18, 2017, the Tenants ultimately agreed to move out of the unit. The rent for April 2017 was not collected in lieu of the one month rent compensation owed to the Tenants from the Landlord having ended the tenancy with the Notice.

The Tenants state that shortly after moving out of the unit they observed that the Landlord did not move into the unit as a family with children moved into the unit. The Tenants also confirmed with a neighbour and their original landlord who lived nearby that the Landlord did not move into the unit and that the family had moved into the unit. The Tenants provide photos of the unit depicting children riding their bikes on the driveway, moving boxes inside the open garage and a vehicle. The Tenant also spoke with these tenants in or about July 2017 who confirmed that they rented the unit from the Landlord for \$2,300.00 per month. These tenants have since moved out of the unit

and another set of tenants moved in. The Tenants seek two months compensation for the Landlord's breach of the Act.

The Tenants also claim additional compensation for their moving costs, higher rent costs, and stress caused by the Landlord's actions in ending the tenancy and lying to the Tenants about the reason for ending the tenancy.

Analysis

Section 51(2) of the Act provides that 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. Based on the undisputed evidence that the Landlord did not move into the unit as stated under the Notice, I find that the Tenants have substantiated an entitlement to the compensation of **\$3,300.00** (\$1,650 x 2). As the Act determines the amount of compensation for the Landlord not using the unit for the stated purpose contained in the second Notice, I dismiss the Tenants' claims for further compensation for the Landlord's lies about moving into the unit.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 49 of the Act allows a landlord to end a tenancy for landlord's use if the landlord intends to move into the unit by giving a notice to end the tenancy. This section also provides that a tenant may dispute such a notice. As the Landlord was allowed to end the tenancy by giving the notices to end the tenancy and as the Tenants disputed both notices, the Tenants have not shown that the Landlord

breached the Act by serving the Notices. As the Tenants were successful in cancelling the first notice there were no moving costs. As the Tenants ultimately moved out of the unit by agreement during the dispute of the second Notice I find that the Tenants have not substantiated that the Landlord caused the additional losses claimed and I dismiss these claimed monetary amounts.

As the Tenants' claim for the Landlord's breach of the Act has been successful I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,400.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$3,400.00**. If necessary, this order may be filed in the Small Claims 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: January 16, 2018

Residential Tenancy Branch