



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 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Is the tenant entitled to a monetary order for compensation for damage or loss?

Should the Landlord be ordered to comply with the Act?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The tenancy began on February 1, 2014 with a monthly rent of \$2500.00 payable on the 1st day of each month. The rental unit is the lower level of a 3 level home. The landlord resided in the upper portion of the home with her husband and two children.

On June 10, 2016, the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of August 31, 2016. The grounds for issuing the 2 Month Notice was that the landlord or the landlord's close family member intended to occupy the rental unit.

The tenant filed an application to dispute the 2 Month Notice and during the hearing for that dispute the parties entered into a mutual agreement to end the tenancy on October 31, 2016. The tenant vacated the rental unit earlier on September 11, 2016.

The tenant is arguing the landlord did occupy the rental unit for at least 6 months after she vacated. The tenant is claiming monetary compensation equivalent to 2 Month's rent. The tenant also claimed additional monetary loss totaling \$23,428.50 but did not provide any particulars or a monetary order worksheet for this claim. The tenant agreed in the hearing to restrict this claim to the 2 Month's compensation.

In support of her claim the tenant testified the landlord had originally stated they intended to occupy the rental unit due to a separation with her husband. The landlord's husband was to occupy the rental unit. The tenant testified that the home was listed for sale 1 month after she vacated. The tenant testified that she continues to rent a place in the same area as she has noticed the entire house has since been completely unoccupied. She believes the landlord vacated the entire house in an effort to sell the house. She testified that she has noticed the blinds always closed and no movement inside the house. The tenant further submitted evidence of the landlord securing movers and storage prior to the 2 Month Notice being served which she argues shows the landlord's intent to sell the house.

The landlord testified that the 2 Month Notice was served as her husband intended to occupy the rental unit as they are going through a separation. The landlord testified that her husband moved into the rental unit 1 week after the tenant vacated and continues to reside in the rental unit. She and her two children also moved out of the rental unit and moved in with her mom for a 3 month period after the tenant vacated. The landlord does not deny putting the house up for sale. The house did not sell and is no longer listed. The landlord also submitted a total of four affidavits. Two of the affidavits were from realtors hired by the landlord to sell the house and two were from housekeepers hired to clean the house. All of the affidavits confirm that the landlord's husband continues to occupy the rental unit.

Analysis

Section 51 (2) of the Act provides that if 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 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.

The burden of proof in this case rests with the applicant tenant. I find that the tenant has not submitted sufficient evidence in support of her claim that the landlord's husband is not occupying the rental unit. The fact that the landlord listed the house for sale does not on its own establish that the landlord's husband did not move into the lower level of the home. The Act does not prevent a landlord from listing a property for sale after issuing a 2 Month Notice. The requirement in this case is that the landlord occupies the rental unit for at least 6 months after the end of the tenancy. The tenant's testimony on this point is insufficient in comparison to the testimony and affidavit evidence presented by the landlord. The fact that the house was listed for sale and the landlord herself moved out of the rental unit corroborates the landlord's testimony that her and her husband were going through a separation and the rental unit was needed for her husband to occupy.

The tenant's application for monetary compensation, an order for the landlord to comply with Act and for recovery of the filing fee is dismissed.

Conclusion

The tenant's application is dismissed in its entirety 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: February 01, 2018

Residential Tenancy Branch