



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 an Application for Dispute Resolution by the tenants for a monetary order for money owed or compensation under the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and Procedural issue

The served their evidence to the tenants by registered mail in accordance with the Act. The evidence package was returned unclaimed. I find neglect to pick up the Canada post package as indicated by Canada post does not override the deemed service provision under the Act. Therefore, I have allowed the landlord's evidence to be considered at the hearing.

Issue to be Decided

Are the tenants entitled to a monetary order for money owed or compensation under the Act?

Background and Evidence

The tenancy began January 2012. Current rent in the amount of \$1,127.60 was payable on the first of each month. A security deposit of \$550.000 was paid by the tenants.

The tenants testified that they were given a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") which had an effective date of August 31, 2017. The tenants stated that they gave notice to end the tenancy earlier and vacated on July 20, 2017.

The tenants testified that the reason in the Notice states:

“The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse.”

The tenants testified that the landlord did not use the premises for the stated purpose as the property was sold. The tenants seek compensation in the amount of \$1,527.58.

The landlord testified that they have given the tenants’ compensation for receiving the Notice and have returned the tenants’ security deposit.

The landlord testified the property had been for sale for some time and they were not going to renew the real estate contract when it expired on August 31, 2017. The landlord stated that their child was going to move into the rental unit on September 1, 2017; however, they received an offer to purchase the property on August 16, 2017, which was accepted and the property was sold.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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.

[Emphasis added.]

In this case, the evidence of both parties supports the tenants' application that the landlord did not use the property for the purpose stated in the Notice. I find the landlord breached the Act, by not using the rental unit for the stated purpose in the Notice as required by the Act.

Section 51(2)(b) provides that if a landlord does not comply with section 51 of the Act the landlord must pay the tenant the equivalent of double the monthly rent payable under the tenancy agreement. The legislation does not provide any flexibility on this issue.

In this case the tenants claimed the amount of \$1,527.58, which is less than double. The tenants at the hearing stated there was a reason for this amount; however, could not remember at the time. Therefore, I find the tenants are limited to the amount claimed of **\$1,527.58**.

Conclusion

Having made the above findings, I must order, pursuant to section 51 and 67 of the Act, that the landlord pays the tenants the sum of **\$1,627.58** comprise of the above amount and the \$100.00 filing fee.

The tenants are given a formal order in the above terms and the landlord must be served with a copy of 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: March 27, 2018

Residential Tenancy Branch