



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

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; and
- authorization to recover the filing fee for this application from the landlords 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 service was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence and stated they had not served any evidence themselves. Based on the undisputed testimonies I find that the landlord was served with the tenants' application and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

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

Background and Evidence

The parties provided undisputed testimony regarding the following facts. This tenancy began in 2015 and ended on September 13, 2017 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") dated July 31, 2017. The monthly rent was \$850.00 payable on the 15th of each month.

The 2 Month Notice provides the reason for the notice as, "the rental unit will be occupied by the landlord or the landlord's close family member". The tenant testified

that the rental unit was advertised online as available for rent on September 12, 2017 at a monthly rent of \$1,200.00. The tenant submitted into evidence copies of the online postings.

The landlord testified that while the intention was that the rental unit would be occupied by the landlord personally, there were circumstances which prevented that from happening. The landlord said that there was a motor vehicle accident that injured the landlord, family circumstances and school obligations which interfered with the original plans. The landlord said that as of the date of the hearing they still intend to occupy the rental unit. The landlord testified that while the landlord could not occupy the rental unit they found a tenant to reside in the suite for several months so as to mitigate any financial hardships.

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 landlord or a close family member will occupy the rental unit. The landlord testified that circumstances arose which prevented that from happening immediately after the tenancy ended. The landlord said that they listed the unit and found a tenant to temporarily reside in the rental unit while the original plans were delayed.

The landlord argues that they acted in good faith and still have a genuine intent to occupy the rental unit in the future. Good faith is not an element affecting the tenant's right to compensation under section 51 of the *Act*. The *Act* is clear in that a tenant is entitled to a monetary award if steps have not been taken to accomplish the stated purpose or the rental unit is not used for that stated purpose. The intention of the landlord when issuing the 2 Month Notice is not material to whether the tenant is entitled to compensation.

The Act states that a landlord must use the rental unit for the stated purpose in a reasonable period after the effective date of the notice. While the landlord submits that there were circumstances which delayed the landlord's original plans to occupy the rental unit and that the delays were reasonable under the circumstances, I find there is little evidence in support of this position. The tenancy ended in September, 2017, nearly 10 months before the hearing date. The landlord said that the plan was to move in to the rental unit in November, 2017, a date nearly 6 months before the present hearing. The landlord said that they still have not occupied the rental unit and while there are plans to do so in the future, could not provide a definitive date.

Furthermore, while the landlord testified that there were circumstances which delayed the original plans from being implemented they did not submit any written evidence in support of their submissions. I find that the delay in using the rental unit for the specified purpose to not be reasonable under the circumstances.

As the undisputed evidence provided is that the property was never occupied by the landlord or a close family member, I find that the tenant is entitled to a monetary award of \$1,700.00, double the amount of the monthly rent.

As the tenant was successful in their application they may also recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,800.00 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords 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: May 16, 2018

Residential Tenancy Branch