



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on June 7, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

Both Tenants as well as the Landlord attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

Both parties agree that monthly rent was \$1,250.00 per month. The 2-Month Notice to End Tenancy (the Notice) was provided into evidence. The Tenants acknowledged receiving this Notice on July 15, 2017. The Tenants moved out on September 1, 2017. On page 2 of the Notice, the Landlord selected the following ground as the basis for the Notice:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The Tenants stated that they want compensation pursuant to section 51 of the Act because the Landlord's son did not move into the rental unit, as was originally indicated.

The Landlord acknowledged that he issued the Notice because he wanted to help his son out and provide him with a place to live. The Landlord stated that his son died (on September 19, 2017) after he issued the Notice, and shortly after the Tenants vacated the rental unit, so he never had a chance to move into the unit. The Landlord provided a copy of the death certificate into evidence. The Landlord also acknowledged that his son did not move into the rental unit but this was not his fault, and was the result of a tragedy. The Landlord stated he re-rented the unit sometime in December of 2017.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenants are seeking two month's rent in compensation (2 x \$1,250.00) because the Landlord of the rental unit did not utilize the unit for the purpose stated on the Notice.

First, I turn to the following portion of the Act which outlines what the Tenants would be entitled to if the Landlord did not use the property for the stated purpose for at least 6 months:

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.

In this case, the landlord issued the Notice on July 15, 2017, because he wanted to help his son out and provide him with a place to live. The Landlord acknowledges that this did not occur but indicated this was because of his son's tragic death, just prior to him moving in. I acknowledge that the Landlord's son died suddenly and plans may have changed with respect to the use of the rental unit. However, regardless of why the plans changed, I find it clear that the Landlord did not use the rental unit for the stated purpose for at least 6 months after the effective date of the Notice. As a result, I find the Tenants are entitled to monetary compensation which is equivalent to double the monthly rent payable under the tenancy agreement (2x\$1,250.00).

As the Tenants were successful with their application, I also grant them the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenants a monetary order in the amount of \$2,600.00.

Conclusion

I grant the Tenants a monetary order in the amount of \$2,600.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: June 07, 2018

Residential Tenancy Branch