



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 tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

PG ("landlord") appeared on behalf of the named landlord in this dispute, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenants' application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants' application and evidence. The tenant AD testified that he did not receive the landlord's evidence package, which the landlord testified was personally served to the tenants. The tenant AD allowed me to summarize the landlord's evidence in the hearing, and the tenant confirmed he had no issue with the admittance of the landlord's evidence. On this basis, the landlord's evidence was considered served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy started in February 2015, and ended on May 31, 2017. Monthly rent was set at \$1,400.00 per month, payable on the first of each month. The landlord collected and returned to the tenants the security deposit in full at the end of the tenancy.

The tenants moved out on the effective date of the 2 Month Notice issued to them by the landlord on March 8, 2017. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "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." A copy was included as part of the tenants' evidence.

The tenants are seeking compensation as they moved out pursuant to the 2 Month Notice, and they believe the landlord did not use the home solely for the intended purpose as stated in the 2 Month Notice issued to them. The tenants had rented the entire home from the landlords for \$1,400.00 per month, but after they had moved out in May of 2017, the landlord had renovated the home, divided the home into two separate suites, and re-rented the upstairs portion of the home to new tenants for \$1,450.00 in monthly rent. The landlord confirmed in the hearing that after the tenants had moved out, the home was renovated and a portion of the home was occupied by the father, and the other portion was re-rented out. The landlord testified that they did issue the 2 Month Notice to the tenants in good faith, and for the reason stated on the 2 Month Notice, but the circumstances have changed that required them to proceed in the manner that they did.

The landlord made a correction to the written evidence that they had submitted. The landlord originally noted in their written statement that the new tenants paid \$800.00 in monthly rent as they moved in while the home was being renovated in September of 2017, and the rent increased to \$1,400.00 in January 2017 after the renovations were completed. The new tenants still reside in the upstairs portion of the home. The landlord testified in the hearing that the tenants paid \$1,000.00 per month during the renovations, and now pay \$1,450.00 in monthly rent.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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.

I have considered the evidence and testimony of both parties. It was undisputed by the landlord that the home was renovated, separated into two suites, and re-rented out to new tenants. Although the father of the landlord did move in, and regardless of the original intentions of the landlord, the fact is that this tenancy was ended by the landlord under section 49 of the *Act*, which only allows for the stated purpose on the 2 Month Notice. In this case it was for a close family member to move in. Section 49 of the *Act* does not allow for the landlord to end the tenancy in order to re-rent a portion of the rental unit out to new tenants, which is what the landlord did in this case, whether that was the original intention or not.

I find that the tenants have demonstrated that they are entitled to a Monetary Order of double their monthly rent pursuant to section 51(2) of the *Act*. Based on the evidence before me, I find that the landlord failed to use the rental property strictly for the reason provided on the 2 Month Notice. I find that the landlord renovated the home, and then re-rented a portion of the home for more than what the tenants paid for the entire home.

For the reasons outlined above, I find that the tenants are entitled to compensation as set out in section 51(2) of the *Act*. I therefore find that the tenants are entitled to the recovery of the equivalent of two months' rent. As the normal monthly rent was set at \$1,400.00, I find that the tenants are entitled to a Monetary Order in the sum of \$2,800.00 as claimed.

As the tenants were successful in their application I find that they are entitled to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,900.00 for the landlord's failure to comply with section 49 of the *Act*, and for recovery of the \$100.00 filing fee for this application.

The tenants are provided with this 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, then this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 10, 2018

Residential Tenancy Branch