



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the tenants for a monetary order for monetary loss or other money owed.

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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to a monetary order?

Background and Evidence

The tenant claims as follows:

a.	2 months' rent for not using premises for reason stated	\$8,000.00
b.	Moving and cleaning costs	\$1,602.15
	Total claimed	\$9,602.00

2 months' rent for not using premises for reason stated

The parties agree that a Two Month Notice to End Tenancy for Landlord's use of Property was served on the tenants indicating that the tenants is required to vacate the rental unit on November 30, 2017. The tenants gave notice to end the tenancy with an earlier effective date of October 31, 2017. I find the tenancy legally ended on October 31, 2017.

The reason stated in the notice to end tenancy was that;

- 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 individuals spouse)

The tenant testified that the landlord did not in good faith issue the Notice. The tenant stated that immediately after they vacated the property on October 31, 2017, the property was listed for sale. The tenant stated that the premise sold approximately one week prior to the hearing (July 17, 2018). The tenants submit that they are entitled to the equivalent of two month's rent, moving and cleaning costs.

The landlord testified that they did not have any ulterior motive when they issued the Notice. The landlord stated that before they issued the Notice they informed the tenants that after the Chinese new year that they would be selling the property. The landlord stated that the tenants were offered a 6 month fixed term tenancy agreement; however, that was refused. So they decided to issue the Notice to use the property for their own use until they sold the property after the Chinese New Year.

The landlord testified that they did use the premises for their own purpose for approximately nine (9) months from November 2017, to July 26, 2018, which is the closing date for the sale of the property. The landlord stated there was water damage to the rental unit when the tenants vacated which was repaired and they resided in the premises after that time. The landlord stated that they were away in another country also during this time. The landlord stated at no time did they re-rent the premise.

The tenant responded that they were informed prior to the Notice being issued that the landlord was going to sale the property and were offered a 6 months fixed term; which they did enter into. The tenant stated that they attended the subject property to drop off mail to the landlord, which the landlord's mailbox was full. The tenant stated that they have no idea if the landlords were occupying the premises.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenants were informed prior to the Notice being issued that the landlord plans were to sell the property after the Chinese New Year. Therefore, I find this cannot be an ulterior motive as this was fully disclosed to the tenants.

The fact that the property was listed shortly after the tenants vacated, that alone does not prove a violation of the Act, as this likely would have occurred if the tenants remained in the rental unit.

The issue for me to determine is whether the landlord has breached section 51(2)(b) of the Act, by not using the rental unit for the stated purpose in the Notice for at least 6 months duration.

The Black's Law Dictionary sixth edition defines the legal meaning of occupy.

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

[Emphasis added]

In this case the landlord held the property for their own use for approximately nine months. I find the landlord has complied with the Notice as they kept the premises for their own use for at least six months as required by the Act. I find the tenants have not met the burden of proof, that the landlord violated section 51(2)(b) of the Act.

Conclusion

The tenants have failed to prove a violation of the Act, by the landlord. The tenants' application is dismissed 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: July 18, 2018

Residential Tenancy Branch