



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 in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on March 15, 2018 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on March 20, 2018. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on July 1, 2014 and ended on July 31, 2017. Rent of \$2,800.00 was payable on the first day of each month. The security and pet deposits have been dealt with. The tenancy was ended by the Landlord with a two month notice to end

tenancy for landlord's use with the stated reason that the unit will be occupied by the Landlord or a close family member of the Landlord (the "Notice").

In a previous decision dated July 19, 2017 the validity of the Notice was not considered as the Tenant had moved out of the unit. This decision notes that the person who attended that hearing and was named as one of the Landlords gave evidence that he was an owner of the unit and was intending to move into the unit. The Tenant had named this person as a landlord for the previous application as this person had issued the Notice. Although not noted in the previous decision the Tenant states that this person also gave evidence at that hearing that he was the cousin of the owner. The previous decision dismissed the Tenant's claim for two months compensation with leave to reapply as it was made too early. The previous decision also makes the following order:

If there is a subsequent hearing, I HEREBY ORDER for the hearing that the person who is moving into the unit produce legal documents proving ownership of the unit and if he is not the owner, his close family relationship to the owner (as defined in section 49 of the Act).

It is noted that the Tenant has now named one Landlord. The Tenant states that this is the person who is the owner of the unit and was named as the Landlord in the tenancy agreement. It is noted that the Tenant sent this application for dispute resolution to the Landlord at the dispute rental unit. It is noted that the Landlord did not provide any evidence for this hearing. The Tenant states that the person who attended the previous hearing as a Landlord is not an owner and as a cousin does not fall into the close family member category for occupancy of the unit. The Tenant provides a copy of a BC Assessment report indicating that there is only one owner and it is noted that this owner is the person named as the Landlord in this application.

The Tenants moved into another unit in the building containing this previous unit. The Tenants have seen that the Landlord or a close family member of the Landlord has not

moved into the unit. The Tenant describes a person that has been seen coming and going from the unit and on the basis of this person's appearance do not believe that this person is either the cousin or the owner. The Tenant states that this person does not appear to be any relative of the Landlord.

The Tenant claims the equivalent of two month's rent in compensation as well as moving costs.

Analysis

Section 51(2) of the Act, prior to the amendments made effective May 17, 2018, provides that if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy for landlord's use 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. Given that the Landlord provided no evidence as ordered for this hearing and based on the undisputed evidence that the Landlord or a close family member of the Landlord did not move into the unit I find that the Tenants have substantiated that the rental unit has not been used for the stated purpose for ending the tenancy. The Tenants are therefore entitled to the compensation of **\$5,600.00** (\$2,800.00 x 2). As this claim has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,700.00**. As the Act sets the compensation amount for the Landlord's breach I find that the Tenants are not entitled to a greater amount for the same breach and I dismiss the claim for moving costs.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,700.00**. If necessary, this order may be filed in the Small Claims 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: October 3, 2018

Residential Tenancy Branch