



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 Tenants 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 and Tenant were each given full opportunity under oath 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 following are undisputed facts: The tenancy started in 2000. The Landlord purchased the unit sometime in 2016. Rent of \$2,500.00 was payable on the first day of each month. The Parties had a tenancy agreement in place for the last year of tenancy with a start date of August 1, 2016 on a fixed term to end July 31, 2017. The tenancy agreement provided that at the end of the fixed term the tenancy would continue on a month to month basis. The Landlord served the Tenants with a two month notice to end the tenancy with an effective date of August 31, 2017 (the “Notice”). The stated reason for the Notice was that the landlord or a close family member of the landlord will occupy the unit. The Tenants moved out of the unit on July 31, 2017. The unit was rented to new tenants immediately after the tenancy ended.

The Tenant states that on June 24, 2017 the Tenants were sent an email from the Landlord seeking a rent increase to \$3,100.00. The Tenant states that they could not afford the rent and informed the Landlord that the rent increase was greater than allowed under the Act. The Tenant states that they also told the Landlord about that part of the Act that allows the Landlord to apply for a greater increase. The Tenant states that after they refused to accept a rent increase greater than allowed under the Act the Landlord then served the Notice. The Tenant states that the Landlord did not occupy the unit as stated and that the Landlord advertised the unit for rent of \$3,000.00 per month shortly after serving the Notice to the Tenants. The Tenants provide a copy of this advertisement dated July 8, 2017. The Tenant states that new tenants attended the unit on the day that the Tenants were doing the move-out inspection and that the Landlord conducted a move-in inspection for the new tenants at the same time. The Tenant states that they gave their keys to the unit directly to the new tenants at the move-out inspection.

The Landlord states that after they purchased the unit the rents in the area were higher. The Landlord states that they were new to the landlord business. The Landlord states that they attempted to negotiate a rental increase to \$2,800.00. The Landlord states that the tenancy was going to end at the end of the fixed term anyway. The Tenant states that if it were not for the Notice the Tenants would have continued to reside in the unit.

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 a 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. Although the Landlord argues that the tenancy agreement would have ended anyway I find that this is not the case as the evidence shows that the tenancy was to revert to a month to month tenancy at the end of the tenancy and there was therefore no requirement for the Tenants to move out of the unit. The Landlord's unfamiliarity of the laws that apply to tenancies is not an excuse that allows the Landlord to avoid the application of the Act. There is nothing in the Act that requires the Tenant to agree to negotiate or accept a rent increase greater than allowed under the Act. The Act does allow a landlord to make a special application to increase the rent greater than allowed under the Act however the Landlord did not seek such an order.

As the Landlord served the Tenants with the Notice I find that the Landlord ended the tenancy for the purpose stated on the Notice as allowed under the Act. As it is undisputed that the Landlord did not subsequently use the unit for the stated purpose of the Notice I find that the Tenants are now entitled to double the monthly rent payable of **\$5,000.00**. As the Tenants have been successful with its claim I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,100.00**.

It is noted that the Tenants' application sets out a total monetary claim of \$6,500.00 however no monetary order worksheet was provided setting out the specifics of this monetary amount and the Tenants did not provide any evidence of a monetary claim beyond the two month compensation for the Notice and the filing fee. As a result I find that the Tenants are not entitled to a monetary amount larger than granted in this Decision.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,100.00**. 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 10, 2018

Residential Tenancy Branch