



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed and to recover the filing fee from the landlord.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The parties agree that a 2 Month Notice to End Tenancy for Landlord's use of Property was served on the tenant indicating that the tenant is required to vacate the rental unit on March 31, 2018.

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.

The tenant testified that the landlord listed the property for sell shortly after they vacated, which was within the six month period. The tenant stated that they have no information as to whether the property was sold. Filed in evidence is a copy of a real estate listing.

The landlord testified that they did list the property for sale, as they were considering their option because their child was not settling in to their new environment. The landlord stated that their child finally settled in, with assistance, and they removed the listing. The landlord stated that they have been occupying the premises. Filed in evidence is a land title document showing the property has not been sold and utility invoices.

Analysis

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

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.

Under section 52 of the Act, a tenant may be entitled to an additional amount payable from the landlord, if the landlord has not met the following requirements.

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I accept the evidence of the parties that the landlord listed the property shortly after they were occupying the premise; which was later removed. However, I find that listing the property for sale on its own, does not prove a violation. The landlord is entitled list the property; however, they

cannot give possession to another person until after the 6 months' duration has expired.

*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]

Further, the landlord did not sell the property, and are currently occupying the premises. This is supported by the land title document filed in evidence. The tenant did not deny the landlord testimony or documents. I find the landlord has held possession of the premise for at least 6 months' as required by the Act.

Based on the above, I find the tenant has failed to prove a violation of the Act by the landlord. Therefore, I dismiss the tenant's application. Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee.

Conclusion

The tenant's application is dismissed.

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: November 05, 2018

Residential Tenancy Branch