



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act.

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.

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

Is the tenant entitled to compensation under the Act?

Background and Evidence

The parties agreed the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") issued on June 5, 2018. The parties agreed the tenant accepted the notice and moved from the rental unit on August 31, 2018.

The tenant testified the landlord did not use the unit for the intended purpose stated in the Notice. The tenant stated the landlord advertised the rental unit for rent, six days after they vacated. The tenant stated that their rent was for \$800.00 per month and the advertised rent was \$1,250.00. Filed in evidence is a copy of the advertisement.

The landlord testified that they did rent the premises out. The landlord stated that it was on September 2, 2018, when they found out they were going to have a baby and due to that they decided to rent the premises out in order to save money for when they were off on maternity leave, starting in May 2019.

Analysis

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

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), **an amount that is the equivalent of 12 times the monthly rent** payable under the tenancy agreement if

(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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

.**[Emphasis added.]**

In this case, the landlord agreed that they advertised the rental unit six (6) days after the tenant vacated on August 31, 2018. The rental unit was re-rented.

The reason in the Notice states:

“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.”

[Reproduced as written]

I find the landlords have breached the Act, by failing to use the premises for the reason stated in the Notice.

While the landlords may have found out after the tenant vacated the premises, that they were expecting a child, I find that reason is not an extenuating circumstance. The landlords could have used the rental premises for the stated purpose for at least six month, prior to the birth of the baby. I find renting the premises was a personal choice and not an extenuating circumstance.

Since I have found the landlords have breached the Act, I find that the tenant is entitled to compensation in the amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement. Therefore, I find the tenant is entitled to receive from the landlords the amount of **\$9,600.00**.

Conclusion

Having made the above findings, I must order, pursuant to section 51 and 67 of the Act, that the landlords pays the tenant the sum of **\$9,700.00**, comprised of the equivalent of 12 times the monthly rent (\$800.00) and the \$100.00 filing fee.

The tenant is given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and

enforced as an order of that court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for a monetary order is granted in the above noted amount.

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: January 15, 2019

Residential Tenancy Branch