



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two landlords, male landlord ("landlord") and "female landlord" (collectively "landlords") and the two tenants, male tenant ("tenant") and "female tenant" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The female tenant did not testify at this hearing. The tenant confirmed that he had permission to represent the female tenant as an agent at this hearing (collectively "tenants"). This hearing lasted approximately 33 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' written evidence package.

The tenant confirmed receipt of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated February 28, 2018 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlords' 2 Month Notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to reverse the order of the female landlord's first name and surname. The female tenant confirmed her name during the hearing and submitted documentation for same. I see no prejudice to either party in making this amendment.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 13, 2016 and ended on April 13, 2018. Monthly rent of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants and the landlords returned the full deposit to the tenants. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The tenants seek compensation under section 51(2) of the *Act* for double the monthly rent of \$1,300.00, totaling \$2,600.00, plus the \$100.00 application filing fee. The tenants claim that because the landlords did not use the rental unit for the purpose on the 2 Month Notice, they are entitled to compensation. The landlords dispute the tenants' application.

Both parties agreed that the tenants vacated the rental unit and received one month free rent pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the 2 Month Notice was April 30, 2018 but the landlords' property management company, that was the agent for the landlords throughout this tenancy, sent a letter, dated February 28, 2018, to the tenants indicating that the effective date of the 2 Month Notice was May 31, 2018. Both parties agreed that this was to account for the three-day service provision

allowing for posting the notice on the tenants' door on February 28, 2018, and therefore deeming service on March 3, 2018, as per section 90 of the *Act*. Both parties agreed that the reason indicated on the notice was:

- *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 individual's spouse).*

The tenant said that the landlords did not move into the rental unit, as he was told on the 2 Month Notice. He stated that he saw an advertisement for the rental unit on August 31, 2018, to re-rent the place. He claimed that once the property management company received this application from the tenants, they took the rental advertisement down because they knew what they were doing was wrong.

The landlord stated that he moved into the rental unit from approximately May 10, 2018 until approximately August 27, 2018. He said that his intention was to live there for longer but he was required to move out in order to take a job out of country. He said that the tenants were correct that his property management company advertised the rental unit for re-rental on August 28 or 29, 2018. He claimed that the rental unit was re-rented to an elderly couple as of September 2018. The female landlord claimed that the elderly couple moved out in December 2018 and then a younger couple moved in December 2018 and began paying rent as of January 2019 and they still live there. The landlord confirmed that the female landlord did not move back into the rental unit after the tenants vacated because she worked out of country.

Analysis

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to double the monthly rent (as per the former provision prior to May 2018) if the landlords do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) stated previously:

- 51 (2) In addition to the amount payable under subsection (1), if*
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenants vacated the rental unit on April 13, 2018, pursuant to the 2 Month Notice, which was issued by the landlords for them to move into the unit. The landlord moved in to the unit for just over three months from May 10 to August 27, 2018 and then moved out to take a job out of country. The female landlord never lived at the rental unit after the tenants vacated. The landlords then re-rented the unit from September 2018 to present, January 2019, to two different sets of tenants.

Therefore, I find that the landlords breached section 51(2)(b) of the *Act*, as they did not occupy the rental unit for at least six months after the tenants vacated on April 13, 2018.

Accordingly, I find that the tenants are entitled to double the monthly rent of \$1,300.00 as compensation under section 51 of the *Act*, which totals \$2,600.00.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$2,700.00, against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 18, 2019

Residential Tenancy Branch