



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The tenant applies for the twelve month's rent penalty prescribed under s. 51 of the *Residential Tenancy Act* (the "Act") in the case where a landlord does not properly carry out the stated purpose of a two month Notice to End Tenancy for landlord use of property.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord carried out the stated purpose of the Notice?

Background and Evidence

The rental unit is a one bedroom lower portion of one side of a duplex. The landlord and a business partner are equal owners of both sides of the duplex, totalling four rental units.

The tenancy started before this ownership, likely around 2009. It ended on August 31, 2018 as a result of the two month Notice. The last rent had been \$806.00. The landlord still holds the tenant's \$350.00 security deposit. He claims he has not returned it because he did not have the tenant's forwarding address. He was informed that the address given by the tenant in his application will serve as the forwarding address.

The tenant says that for the last part of his tenancy the landlord had a "for sale" sign in front of the duplex. He says he returned to the property in early September and saw that the interior of his rental unit had been gutted and significant renovation work was

taking place. He took photos and submitted them in support of his claim. The “for sale” sign was gone.

He says he returned to the rental unit around January 1, 2019 and looked in the window to see that there was no furniture in the rental unit. Returning there recently, he says he looked in the window again and though there was no furniture there were personal items in the kitchen.

He is unaware whether the landlord has offered the rental unit for rent on such common sites as Craigslist or Kijiji.

The landlord testifies that he and his business partner had put the duplex up for sale well before the Notice, in an attempt to catch the high prices accommodation had been fetching around that time. He says they were unsuccessful and took the duplex off the market, however their realtor was tardy in attending to remove the sign.

The landlord says it was and is his intention for his mother to move in. He renovated the suite for her, finishing the job in November. He produces a tenancy agreement between his mother, he and his business partner for a tenancy commencing in October 2018. His mother was not sure of her timeline to move and is presently moving in now. He produces a bill claiming to show that the hydro for the rental unit is now in his mother's name. He says the tenant is free to come over and meet her.

Analysis

Section 51(2) and (3) of the *Act* provides:

(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.

The burden of proving the landlord did not use the rental unit as accommodation for his mother “for at least six months’ duration, beginning within a reasonable time after” August 31, 2018, is a burden that is initially on the tenant.

The landlord’s version of events is bolstered by the lack of evidence that he tried to rent the unit to anyone else.

In all the circumstance I find that the tenant has not satisfied the burden of proof on a balance of probabilities and I dismiss his application.

Conclusion

The application is dismissed. It was noted at hearing that the six month period has not yet expired.

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 22, 2019

Residential Tenancy Branch