



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 an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act*, (the "*Act*"), for a monetary order for money owed or compensation for damage or loss, and to recover the filing fee for their application. The matter was set for a conference call.

Both the Landlords and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss, pursuant to section 51 of the *Act*?
- Are the Tenants entitled to recover the filing fee for their application?

Background and Evidence

The agreed upon testimony of the parties was that their tenancy began on August 1, 2013. Rent in the amount of \$1,700.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenants paid a \$850.00 security deposit.

All parties agreed that the Landlords served the Tenants a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") on April 15, 2018. The Notice indicated that the Tenants were required to vacate the rental unit as of June 30, 2018. The reason checked off by the Landlords within the Notice was as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, child of that individual's spouse).*

Both parties agreed that the Tenants moved out of the rental unit, in accordance with the Notice on June 30, 2018, and that the Landlords returned the security deposit to the Tenants.

The Tenants testified that they found out that the rental property had been re-rented as of October 1, 2018. The Tenants are requesting compensation for the rental property not being used as indicated on the Notice.

The Landlords testified that their daughter had changed her mind and decided not to move into the rental unit. The Landlord agreed that they had rented the rental unit.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51 of the *Act*. I note that section 51 of the *Act* was amended on May 17, 2018. Therefore, I must first determine if the amended legislation pertains to the Notice issued in this case or if this Notice falls under the old legislation.

The royal assent for the legislated amendments was received on May 17, 2018, and stated that the amendments apply to all notices issued as of the date of royal assent and onwards.

In this case, I find that the Notice was issued on April 15, 2018, prior to the date of royal assent and therefore falls under the form and content of the old legislation.

Section 51 of the old legislation stated:

Tenant's compensation: section 49 notice

- 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.

I accept the testimony of the Landlord that their daughter did not move into the rental property as planned. I find that the Landlords are in breach of section 51 of the *Act*, as they did not use the property for the stated purpose on the Notice.

Pursuant to section 51 of the *Act*, I find that the Tenants have successfully proven they are entitled to compensation for the Landlords' breach of the *Act*. Therefore, I must grant the Tenants a monetary order in the amount of **\$3,400.00**, consisting of two months' rent compensation.

I acknowledge the testimony of the Landlords, that it had been out of their control that their Daughter had decided not to move into the rental property. However, I note that notices issued pursuant to section 49 of the *Act*, before May 17, 2019, have no provision to allow an arbitrator discretion for extenuating circumstances when rendering their decision, pursuant to section 51 of the *Act*.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the **\$100.00** filing fee paid for this application.

Conclusion

I grant the Tenants a Monetary Order in the amount of \$3,500.00. The Tenants are provided with this Order in the above terms, and 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 28, 2019

Residential Tenancy Branch