



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation.

The Tenant and an agent for the Landlord (the “Landlord”) were both present for the duration of the teleconference hearing. The parties were affirmed to be truthful in their testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the first page of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) that was submitted as evidence by the Tenant. The Tenant also submitted one photo as evidence to the Residential Tenancy Branch which the Landlord stated he did not receive.

The Tenant stated that the photo was sent to the Landlord in a separate package by registered mail but did not have information to confirm that it was sent or received. As stated by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure*, evidence intended to be relied upon by the applicant must be received by the Residential Tenancy Branch and the respondent at least 14 days prior to the hearing. Although the photo was submitted to the Residential Tenancy Branch 14 days before the hearing, as the Tenant was not able to confirm that it had been served to the Landlord, the photo will not be accepted into evidence. The Landlord did not submit any evidence prior to 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.

Preliminary and Procedural Matters

At the outset of the hearing the agent for the Landlord clarified the company name of the Landlord. As this was a different company name than what the Tenant listed on the Application for Dispute Resolution, the application was amended to correctly name the business name of the Landlord. The Tenant agreed that the company name should be amended. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issue to be Decided

Is the Tenant entitled to monetary compensation?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on June 5, 2016 and ended on July 31, 2018. A security deposit of \$1,400.00 was paid at the outset of the tenancy and monthly rent at the end of the tenancy was \$2,900.00.

The Tenant stated that during the tenancy the rental unit was listed for sale and they assisted the owners with the sale by making accommodations for showings of the property. However, the Tenant testified that the owners decided to move into the home instead of selling it, and therefore the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice").

The first page of the Two Month Notice was submitted into evidence and states that it was served on July 19, 2018. The notice was dated July 9, 2018 and the effective end of tenancy date was stated as September 30, 2018. Although the second page of the Two Month Notice was not included in evidence the Tenant provided testimony that the notice stated that the Landlord or a close family member would be occupying the rental unit.

The Tenant testified that they provided notice to the Landlord that they would be moving out early as they found another place to rent. He stated that they put a security deposit down on the new place but were then notified by the agent that the owner's plans had

changed and they would not be moving in right away. Although the Tenant submitted that they wanted to stay living in the rental unit, they were not able to receive a refund for the security deposit so continued with their plans to move out at the end of July 2018. The Tenant confirmed that they received one month of rent compensation pursuant to Section 51(1) of the *Act*.

The Tenant stated that they drive by the rental unit often and noticed that the house is empty and there is a for sale sign. He stated that he noticed it was still listed for sale as of the day before the hearing. The Tenant applied for \$34,800.00, which is equivalent to 12 months of rent as compensation for the Landlord not using the property for the purpose stated on the Two Month Notice.

The Tenant stated that they were very upset about moving out of the rental unit as they enjoyed the home and property. He also noted that the receipt of the Two Month Notice and the subsequent move caused a lot of stress and conflict within his family that would be difficult to put monetary value on.

The Landlord stated that they served the Two Month Notice when asked to do so by the owners. He also agreed that the home was listed for sale while the Tenants were living there, however he stated that the owners changed their mind about selling and decided to move in. After the Two Month Notice was served, the Landlord submitted that the owner's plans changed, and they did not need to move into the rental unit right away. As such, the Landlord testified that he that he notified the Tenant as soon as he found out and advised the Tenant that they could stay longer if they liked. However, he stated that the Tenant declined the offer as they had already found another place to move to.

The Landlord stated that the owner still occupies and takes care of the home. He stated that the home was not re-rented, and he was unsure whether the home is currently listed for sale. He stated that he is unsure of the owner's plans for the rental unit in the future but stated that it is currently occupied by the owner.

Analysis

As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the onus is on the Tenant to establish that he is entitled to 12 months of rent compensation in the amount of \$34,800.00.

The parties were in agreement that a Two Month Notice was served to the Tenant pursuant to Section 49(3) of the *Act* as the Landlord or a close family member of the Landlord intended to occupy the rental unit.

Section 51(2) states the following:

(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.

The Tenant stated that the home was listed for sale and therefore the Landlord or a family member of the Landlord was not occupying the home. However, I do not find sufficient evidence from the Tenant to establish that the owner/landlord or a close family member has not occupied the home as stated on the Two Month Notice. The only evidence accepted from the Tenant in accordance with the *Rules of Procedure* was the first page of the Two Month Notice.

The Landlord acknowledged that the owner's plans regarding when they were moving into the rental unit changed, but that the home is currently occupied by the Landlord. The owner was unsure if the rental unit is currently listed for sale.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. In this matter, the Tenant did not submit sufficient evidence to establish that the home is not currently occupied by the Landlord.

I also find it relevant to note the definition of occupy as stated in *Black's Law Dictionary*. To 'occupy' is to hold or have possession of. As stated, I do not have evidence before me to establish that the rental unit is being sold by the owner. However, the Tenant also claimed that the rental unit was currently empty. While the Landlord did not confirm

whether the owners were actually residing in the rental unit, he did provide testimony that the rental unit was currently occupied by the owners. Based on the meaning of 'occupy', I do not find that the owner/landlord has to reside in the home to occupy it.

The Tenant did not submit sufficient evidence to establish that the Landlord did not follow through on the stated purpose of the Two Month Notice and that he is entitled to monetary compensation pursuant to Section 51(2) of the *Act*. Therefore, I decline to award any compensation to the Tenant. The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

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: February 12, 2019

Residential Tenancy Branch