



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 tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlords' failure to use the rental unit for the purpose stated in the notice to end tenancy?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on November 15, 2013. Monthly rent was set at \$650.00, payable in advance on the first of each month.

It was undisputed by both parties that the tenant moved out on August 1, 2018 as per a 2 Month Notice issued to her by her previous landlord on May 27, 2018. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a closer family member intends in good faith to occupy the rental unit". A copy was included as part of the tenant's evidence.

The tenant is seeking compensation as the new landlords rent the home as a vacation rental, and the home is listed on a popular vacation rental website. The landlords do not dispute that they operate a business out of the home, and provided documentation in their evidentiary materials to support that that the business was registered in August of 2018. The landlords testified that they had complied with the *Act* as they moved into the home and occupy it as stated on the 2 Month Notice. The landlords operate their adventure tourism business out of their home, and have not tenanted their home under the definition of the *Act*.

Analysis

Section 51(2) of the *Act* reads in part as follows:

51(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.

I have considered the testimony and evidence of both parties, and I find that although it was undisputed that the landlords do operate a business out of their home, the landlords are still in compliance with section 49(3) of the *Act*. I find that the landlords were forthright in their testimony and in their evidentiary materials, and I find their testimony credible.

The reason on the 2 Month Notice was that the purchaser or a closer family member intends in good faith to occupy the rental unit, and I am satisfied that the purchasers occupy the home as stated on the 2 Month Notice. Accordingly, I dismiss the tenant's application for compensation under section 51(2) of the *Act* without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful with her application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's entire application 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 27, 2019

Residential Tenancy Branch