



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 (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for money owed or compensation for loss under the Act, regulation, or tenancy agreement and recovery of the filing fee.

Tenant J.R. as well as the Tenants’ witness R.Y. appeared for the Tenants. The Landlord and the Landlord’s representative S.P also attended the hearing at the appointed date and time. All parties provided affirmed testimony.

The Tenant testified that he served the Tenants’ Application to the Landlord by registered mail on December 8, 2018. The Tenant stated that he served the Tenants’ documentary evidence package to the Landlord by registered mail on March 12, 2019. The Landlord confirmed receipt of both mailings. The Landlord testified that she served the Tenants with her documentary evidence by posting it to the Tenants’ door on March 18, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 15, 2016. Rent in the amount of \$1,300.00 was due to the Landlord each month. The Tenants paid a security deposit in the amount of \$650.00. The Tenancy ended on August 31, 2018. The Tenants submitted a copy of the tenancy agreement in support.

The Tenant stated that on June 29, 2018, the Tenants received a Two Month Notice from the Landlord, stating that the rental unit will be occupied by the landlord or the landlord's close family member. The Two Month Notice dated June 29, 2018, has an effective vacancy date of August 31, 2018. The Tenants submitted a copy of the Two Month Notice in support.

The Landlord testified that she served the Two Month Notice to the Tenants as she intended to move back to her home after learning that her boyfriend was allergic to her dog and she was required to move as a result. The Landlord testified that she moved into her home on September 1, 2018 and has lived there ever since. The Landlord stated that she has very little furniture and that she mainly occupies the back bedroom of the home. The Landlord stated that she is struggling with health issues resulting in limited mobility. Therefore, she tends to keep to herself.

The Tenant testified that the Tenants found a new rental unit and moved out of the rental unit on August 31, 2018, complying with the Two Month Notice. The Tenant stated that in January 2019 he returned to the subject rental unit at which point he noticed that there had been some improvements completed to the property such as; a new fence, landscaping, and interior painting. The Tenant stated that he observed that there was no furniture visible inside the home. The Tenants submitted photos in support. The Tenants do not feel as though the Landlord has moved into the subject rental unit and is claiming that the Landlord served the Two Month Notice in bad faith.

R.Y. testified that he lives across the street from the subject rental unit and confirms that the Landlord has completed some improvements to the home. R.Y. stated that he

doesn't feel as though the Landlord resides at the home and that it is only as of late that he has seen her at the home.

In response, the Landlord testified that she has been residing at the home since September 1, 2019. The Landlord agreed that she had a fence installed to contain her dog in the backyard. Furthermore, the Landlord submitted a copy of her government identification, a bank statement, her insurance policy, a bill, and a delivery receipt which all indicate that she is the occupant of the home. S.P. testified that he can also confirm that the Landlord has lived at the home since September 1, 2018 and continues to occupy the home.

The Tenants are seeking compensation in the amount of twelve months rent pursuant to section 51 of the Act as they claim that neither the Landlord nor their close family member occupied the rental unit for at least six months beginning within a reasonable period after the effective date of the Two Month Notice.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 51(2) of the Act states that in addition to the amount payable under subsection one, if 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 the rental unit is not used for that stated purpose for at least six 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 to 12 times the monthly rent payable under the tenancy agreement.

In this case, the parties agreed that the Tenants moved out of the rental unit on August 31, 2018 in relation to a Two Month Notice for Landlord's Use of the Property. I accept that the parties agreed that the Landlord completed some improvements to the home and yard. The Tenant and R.Y. stated that it does not appear as though anyone is living in the home.

The Landlord testified that she moved into the home on September 1, 2018 and that she has minimal furniture and typically occupies the back bedroom with her dog.

I find that the Landlord is entitled to conduct minor improvements to her home if she wishes. Furthermore, I find there is insufficient evidence before me to demonstrate that the Landlord has acted contrary to the intentions set out in the Two Month Notice, such as re-renting the home to another tenant. The *Act* makes no mention as to how much furniture must be visible inside the rental unit, or how often the Landlord must be seen in order to demonstrate occupancy. I find that the Landlord has provided sufficient evidence to demonstrate that it is more likely than not that she occupies the home and has fulfilled the intended purpose noted on the Two Month Notice.

In light of the above, I dismiss the Tenants' Application without leave to reapply. As the Tenants were not successful with their Application, I find that they are not entitled to the return of their security deposit.

Conclusion

The Tenants have provided insufficient evidence to demonstrate that the Landlord has acted contrary to the Two Month Notice for Landlord's Use. I dismiss the Tenants Application 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: April 09, 2019

Residential Tenancy Branch