



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The parties confirmed that they exchanged their documentary evidence. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of two months' rent as claimed or any other costs incurred as result of this notice?

Background and Evidence

The tenant gave the following testimony. The tenancy began on October 1, 2016 for a six month term and thereafter on a month to month basis. The monthly rent was \$1000.00. At the outset of the tenancy the tenant provided a security deposit of \$495.50 which has been returned to him.

On February 28, 2018 the landlord served the tenant with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenant to move out of the rental unit by April 30, 2018. The ground for the Notice was that "*All of the conditions for the sale of the rental unit have been satisfied and that*

purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the unit". The tenant moved out of the rental but later discovered that the landlord did not move into the rental unit; instead found multiple listings that the house was used as an Airbnb accommodation. The tenant submitted documents in support of their application, including a copy of the listing that shows the home had been advertised and rented on the website June – October 2018. The tenant submits that he should be given compensation as per the Act along with expenses incurred to move. The tenant is seeking two months' rent of \$2000.00 plus \$560.00 for moving cost for a total claim of \$2560.00

The landlord gave the following testimony:

JV testified that the property was in worse shape than they realized and had an awful odor of smoke and pets. JV testified that he and several other family members did occupy the home at different times during the first six months. JV estimates that the home was listed on Airbnb for 41 days and family members used it another 31 days from June to October. JV testified that the decision to list on Airbnb was to help offset the costs of cleaning, repairs and upgrades the unit required. JV testified that he feels that they have met the requirements under the Act and that the notice was given in good faith and that the tenant should not be awarded any compensation.

Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (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.

The applicant seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the

property was not used for the stated purpose for ending the tenancy. In the landlords own testimony he does acknowledge no family member made this their primary residence for the six months after the tenant moved out as per the Notice. The landlord testified that they will eventually transition into this home as part of their estate planning. I accept the landlords testimony that he was unaware of the provision under the Act and that he meant no malice, however that does not relieve him of his responsibilities and obligations under the Act. I find that the tenant has been successful in his application.

The Act provides that compensation is payable, regardless of intention if the rental unit is **not used for the stated purpose for at least 6 months**, beginning within a reasonable period after the effective date of the Notice. I am satisfied that the tenant is entitled to $\$1000.00 \times 2 \text{ months} = \2000.00

The tenants claim for \$560.00 for moving costs is dismissed as he has not provided sufficient documentation to support that claim.

Conclusion

The tenant has established a claim for \$2000.00. I grant the tenant an order under section 67 for the balance due of \$2000.00. This order may be filed in the Small Claims

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: June 10, 2019

Residential Tenancy Branch