



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence. Both parties confirmed the landlord served the tenant with the submitted documentary evidence. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the tenant clarified and both parties confirmed that the tenant seeks monetary compensation pursuant to section 51 (2) of the Act. The tenant seeks a monetary claim of \$11,640.00 which is equal to 12 months of rent at \$970.00.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$11,640.00 which equals to 12 months of rent at \$940.00. The tenant stated that he was served with a 2 month notice to end tenancy for landlord's use of property and as a result vacated the rental unit on December 1, 2018 in compliance.

In support of this claim the tenant has submitted:

Photograph of realty listing with a status of "Terminated" and showing days on the market at 31 and listed on March 8, 2019

MLS listing dated March 13, 2019

MLS listing dated March 24, 2019

Photograph of emails between landlord and realtor dated April 16, 2019

The landlord disputes the tenant's claims stating that the landlord moved-in mid January 2019 as shown by the submitted electric bill dated January 9, 2019. The landlord stated upon moving in renovations of the premises were made and the landlord occupied the space during this time and as well of the date of this hearing. The landlord has submitted two photographs of the unit showing that the landlord/owner occupies the space. The landlord also submitted a copy of a telephone and hydro bill for showing that the landlord uses the space.

The landlord/owner confirmed that the rental unit was listed on March 8, 2019, but was subsequently unlisted, when the landlord's agent notified the owner that this was prohibited. Both parties confirmed that the unit is no longer being listed for sale.

Analysis

Section 51 (2) of the Act states that a tenant who receives notice to a tenancy under section 49 is entitled to an amount equivalent to 12 times the monthly rent payable under a tenancy agreement if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose, or the rental unit is not used for that stated purpose for at least 6 months' duration.

In this case, the tenant has claimed that the landlord did not occupy the unit, but instead listed the unit for sale. The landlord has disputed this claim stating that the unit was occupied by the landlord mid-January 2019 and has provided copies of utility bills and photographs of personal property in the unit. The landlord did confirm that the unit was listed for sale in March 2019, but the listing has since been “terminated”. The landlord provided undisputed testimony that he has occupied the unit on a part-time basis as his work is out of province since moving in in mid-January 2019.

I accept the undisputed evidence of both parties and find that the landlord does occupy the unit (albeit in a part-time basis) since mid-January 2019. I also accept the landlord’s undisputed evidence that he still occupies the unit on a part-time basis as a “summer home”. I find that the landlord did take steps to accomplish the stated purpose by occupying the rental unit after the effective date of the notice. As such, the tenant has failed to establish a claim for compensation.

Conclusion

The tenant’s application is dismissed.

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: July 02, 2019

Residential Tenancy Branch