



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation pursuant to a s.49 notice to end tenancy for landlord's use of property and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started on November 01, 2017. The monthly rent was \$1,000.00 due on the first of each month. The rental unit consists of a suite located in the basement of the landlord's home. The landlord lives upstairs.

On June 01, 2018, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The reason for the notice was that the rental unit was going to be occupied by the landlord or the landlord's close family. The landlord testified that her daughter CK intended to move into the rental unit.

On August 08, 2019, the tenant gave the landlord a 10-day notice to end tenancy and moved out on August 18, 2018. The tenant agreed that she received compensation pursuant to such a notice and was provided with the equivalent of one month's rent.

The landlord testified that CK moved into the rental unit on August 28, 2018 and but travelled a lot and was away from mid January 2019 to May 01, 2019. The landlord maintained that CK continues to reside in the rental unit as of the date of this hearing.

The tenant testified that CK does not live in the rental unit but does reside in a cottage that is located on the landlord's property. The landlord responded by denying the allegation and confirmed that CK did not reside in the cottage as it was rented out on a vacation website. The landlord provided information to enable me and the tenant to access the website that advertised the availability of the cottage.

Upon viewing the reviews on the vacation rental website, I found that the cottage was occupied by various people in the latter half of 2018 and continues to be advertised as available. I confirmed with the tenant that she was viewing the same website and that the accommodation that was advertised was the cottage on the landlord's property.

The landlord also filed copies of CK's 2018 tax documents and medical records that indicate that CK's mailing address is the same as the rental unit.

Analysis

1. 12 months compensation - \$19,757.52

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement.

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 as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the reason for the notice was that the rental unit was going to be occupied by the landlord or the landlord's close family.

Based on the testimony of the parties, I find that the landlord's daughter CK moved into the rental unit on August 28, 2018 and continues to reside in the rental unit. I accept the landlord's testimony that CK travels a lot and that may be the reason for the tenant's perception that CK does not live in the rental unit.

The tenant testified that CK resides in the cottage and not the rental unit but agreed that the cottage is listed on a popular vacation website as available for rent by travellers on vacation and therefore was not occupied by tenant's daughter after the tenant moved out or at this present time.

Based on the above, I find that the landlord's daughter moved into the rental unit shortly after the tenant moved out and continues to occupy the rental unit. Accordingly, I find that the landlord accomplished the stated purpose for ending the tenancy under section 49 and therefore I find that the tenant's claim for compensation in the amount of 12 month's rent must be dismissed.

Since the tenant has not proven her case she is not entitled to the recovery of the filing fee of \$100.00.

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 15, 2019

Residential Tenancy Branch