



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on July 18, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

The Landlord and the Tenants both attended the hearing. The Landlord confirmed receipt of the Tenant's application and evidence. The Landlord stated he did not serve his evidence to the Tenants, and only uploaded it for me to view.

Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. As this was not done, I will not consider it further.

All parties were provided the 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.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenants stated that monthly rent was \$1,185.00 per month. The Tenants stated they received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on September 29, 2018. The Tenants provided a copy of the Notice into evidence, and it indicates the Landlord was seeking to end the tenancy so that he, or a close family member, could move in. The Tenants stated that the Landlord did not move in, nor did any of his close family. The Tenants stated that the Landlords told them it was their son who was supposed to move in. As such, the Tenants feel the Landlord failed to fulfill his obligations under the Act.

The Landlord stated that his son was, in good faith, intending to move into the rental unit during the first month of 2019. The Landlord stated that his son was planning on making this his permanent home. The Landlord indicated that his son changed his mind, and no longer wanted to live in the rental unit because he was not getting enough work to support living there. The Landlord stated his son told him around January 20, 2019, that he would not be moving in. The Landlord acknowledged that neither he, nor his son, moved into the rental house, and instead, it was listed for sale. The Landlord stated that he spent a couple of months fixing it up in the spring of 2019, prior to listing it for sale and selling it in April of 2019.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenants are seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$1,185.00) because the Landlord, or close family, did not live in the rental unit for at least 6 months.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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 note the Landlord presented some reasons as to why his son did not move into the rental unit. I note the Landlord put the house up for sale instead.

I acknowledge what the Landlord has said on this matter. However, a Landlord who issues a Notice under this section of the Act has to takes steps accomplish the stated purpose on the Notice, within a reasonable period after the effective date of the Notice, and use the rental unit for this stated purpose for a period of at **least 6 months**. In this case, the undisputed evidence is that neither the Landlord, nor his son, lived in the rental unit for 6 months. It appears the Landlord listed the house for sale once his son changed his mind.

A landlord cannot end a tenancy to occupy a rental unit, and then sell the rental unit without occupying the rental unit for at least 6 months.

Further, ***Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy*** states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

I have considered the totality of the evidence and testimony, and I find there is insufficient evidence to show that there were "extenuating circumstances" or that there were exceptional circumstances such that the Landlord ought to be excused from paying the compensation due. Even if the Notice was issued in good faith, there is a requirement for the Landlord to use the rental unit for the stated purpose for at least 6 months. I award the Tenants' claim, in full.

As the Tenants were successful with their application, I also grant them the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenants a monetary order in the amount of \$14,320.00 because the Landlord breached section 51 of the Act.

Conclusion

I grant the Tenants a monetary order in the amount of \$14,320.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 18, 2019

Residential Tenancy Branch