



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 the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served with the tenants' application and evidence. The landlords did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlords' failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on November 1, 2018, with monthly rent set at \$880.00, payable on the first of the month. The tenancy ended after the tenants were

served with a 2 Month Notice on November 14, 2018, with an effective date of January 31, 2019, after the home was sold, and the new landlords or a close family member would be residing in the home. The tenants moved out on January 30, 2019. The new landlords took possession on February 22, 2019.

The tenants testified that they saw an online advertisement for rent on February 23, 2019, and verified that it was in fact the same residence after they had replied to the online advertisement, and were shown the home by the owners' agent. The tenants feel that that the new owners failed to comply with the Act, and filed an application for compensation in the amount of \$10,560.00, equivalent to 12 month's rent.

The landlords do not dispute that they had posted the online ad, as the family member who was to move in was still in another province due to work obligations. The landlords testified that since the family member was unable to move in yet, they would rent out the home in the meanwhile. The landlords testified that they had asked their realtor for assistance, and the realtor had posted the online advertisement, which has since been removed. The landlords testified that the unit is currently vacant at the time of the hearing, and has not been rented out.

Analysis

Section 51(2) of the Act reads in part as follows:

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.

Residential Tenancy Policy Guideline #2A provides more clarity about the requirements of section 49 of the Act when ending a tenancy for landlord's use.

Vacant possession

*Other definitions of "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.*

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

The new landlords took possession on February 22, 2019, and at the time of the hearing on June 25, 2019, over four months later, the landlords provided undisputed testimony that the unit was still not occupied by anybody. Although the home has not been rented out, I am satisfied that the landlords have failed to take the necessary steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, and have failed to provide sufficient evidence supporting the extenuating circumstances that have prevented them from fulfilling their obligations under the Act. In fact, I find it undisputed that the landlords had posted the unit for rent, which does not qualify as a reason for ending a tenancy under section 49 of the Act.

Even though the home remains vacant, this does not satisfy the landlord's obligations under section 49 of the *Act*, as clarified in Policy Guideline #2A as stated above. Accordingly, I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I order that the landlords pay to the tenants \$10,560.00 for failing to comply with section 49 of the *Act*.

As the tenants were successful with their application, I allow the tenants to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the amount of \$10,660.00, in favour of the tenants, in compensation for the landlords' failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 22, 2019

Residential Tenancy Branch