



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 for Dispute Resolution by the tenant for a monetary order for compensation pursuant to section 51 of the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and Procedural matters

At the outset of the hearing RB stated that they were the landlord's agent and should not be named as a respondent as they had no control over the property.

As the tenant's application is based on compensation pursuant to section 51 of the Act, I find the agent is not responsible for the actions of the landlord. Therefore, I find it appropriate to remove RB from the style of cause.

Issue to be Decided

Is the tenant entitled to compensation under the Act?

Background and Evidence

The tenancy began September 2014. Current rent in the amount of \$1,850.00 was payable on the first of each month

The parties agreed the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property issued on January 27, 2018. The parties agreed the tenants accepted the notice and moved from the rental unit on March 3, 2018. Filed in evidence is a copy of the Notice.

The reason stated in the Notice:

The landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual spouse) will occupy the rental unit.

The tenant testified that the landlord did not use the property for the stated reason. The tenant stated that on March 20, 2018, the landlord placed the property for sale and then it was sold in July 2018. Filed in evidence is a copy of the property listing.

The landlord testified that they were preparing for retirement and it was their intent to live in the premises. The landlord stated that after the tenant had vacated they inspected the premises and determined that it was not livable and changed their mind to move into the premises.

The landlord does not deny the property was listed for sale and sold.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Notice was issued on January 27, 2018. The *Residential Tenancy Act* was revised in May 17 2018, to increase the compensation entitlement under this section of the Act. As the Notice in this matter was given prior to the current legislation coming into effect, I have referred to the legislation that was in effect at the time the Notice was given.

Tenant's compensation: section 49 notice

- 51 (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.

In this case, I find the landlord breached the Act, when they did not use the rental unit for the stated purpose. The property was listed for sale shortly after the tenant vacated and the property sold in July 2018. The fact that the landlord only discovered they did not want to live there after the tenant vacate is unreasonable, as the landlord should have determined that before issuing the Notice.

Section 51(2)(b) provides that if a landlord does not comply with section 51 of the Act the landlord must pay the tenant the equivalent of double the monthly rent payable under the tenancy agreement. The legislation does not provide any flexibility on this issue.

I find the tenant is entitled to compensation of double the monthly rent under the terms of the tenancy agreement.

Having made the above findings, I must order, pursuant to section 51 and 67 of the Act, that the landlord pays the tenants the sum of **\$3,800.00**, the equivalent of double the monthly rent (\$1,850.00) and \$100.00 to recover the cost of the filing fee.

Conclusion

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

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: August 14, 2019

Residential Tenancy Branch