



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 pursuant to an Application for Dispute Resolution made by the Tenant on May 15, 2019 (the “Application”). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the “Act”):

- a monetary order for monetary loss or other money owed; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was accompanied by A.D., legal counsel, and L.L., a witness. The Landlords attended the hearing and were accompanied by L.S., a witness. The Tenant, the Landlords, and the witnesses provided affirmed testimony.

The Tenant testified the Landlords were served with the Application package by registered mail on May 15, 2019. The Landlords acknowledged receipt on May 23, 2019. Further, the Landlords testified that documentary evidence was served on the Tenant by email on August 19, 2019. Although not an approved method of service, A.D. did not dispute service or receipt of the Landlords’ documentary evidence. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the Application package and amendment were sufficiently served for the purposes of the *Act*.

The parties were given a full 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties confirmed the tenancy began on November 22, 2015, and that the Tenant vacated the rental unit on March 3, 2019. During the tenancy, rent was due in the amount of \$918.00 per month. The parties agreed there are no outstanding issues with respect to deposits.

The Tenant claims \$11,016.00 as compensation under section 51(2) of the *Act*. The parties agreed the Landlords issued a Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 31, 2019 (the "Two Month Notice"), which was disputed by the Tenant. However, the Tenant and the Landlords attended the hearing that was scheduled on March 19, 2019, and confirmed the Tenant vacated the rental unit on March 3, 2019. The file numbers of the related hearings are included above for ease of reference.

The parties agreed the Two Month Notice was issued on the basis that the Landlords' daughter, L., was going to occupy the rental unit. However, the Tenant testified to his belief that the Landlords' nephew occupied the rental unit. L.L., a witness called by the Tenant, provided testimony in support. He testified that he attended the rental property on April 27, 2019, for the purpose of determining who was residing in the rental unit. L.L. testified that he knocked on the door of the main house (not the rental unit) and was met by a tall, slim, young woman matching the description of the Landlords' daughter, L. L.L. testified that the young woman told him that the Landlords' nephew, R.B., was living in the rental unit but that he was not home.

The Landlords disagreed with the Tenant's assertion. Although the Landlords agreed their nephew has lived in the main house, they denied he lived in the rental unit. In addition, the Landlords denied their nephew's surname is what L.L. testified. They testified that L. moved into the rental unit at the end of March 2019 and moved out at the end of May 2019. S.S. moved into the rental unit at the end of May 2019, due to marital differences between the Landlords. S.S. testified that he continues to reside in the rental unit, and that it has been a time of transition for the family.

L. attended the hearing unexpectedly and confirmed the Landlords' testimony, without having heard it during the hearing. Further, in response to hearing a summary of the testimony of L.L., L. testified that she had no recollection of the conversation and suggested it may have been her friend, who matches the description of the young woman provided by L.L.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

With respect to the Tenant's request for compensation, section 51 of the *Act* confirms that a landlord who issues a notice under section 49 of the *Act* but fails to take steps to accomplish the stated purpose for ending the tenancy within a reasonable time, or if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the tenant is entitled to receive an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement. However, the director may excuse the landlord from the obligation to pay compensation if "extenuating" circumstances prevented the landlord or the purchaser from doing so.

In this case, I find there is insufficient evidence before me to grant the relief sought. I prefer the evidence of the Landlords, particularly the unprepared testimony of L., who confirmed that she lived in the rental unit from the end of March 2019 to the end of May 2019, and that S.S. then moved into the rental unit and continues to reside there. While I accept that L.L. attended the rental property on April 27, 2019, I find his evidence to be less reliable than that provided by the Landlords. He testified he did not knock on the door of the rental unit but on the door of the main residence. In addition, he was unable to confirm the identity of the young woman he encountered, other than to provide a general description of her physical appearance. Further, the evidence respecting the name of the Landlords' nephew differed. However, I accept the evidence of the Landlords' daughter, L., who testified that she had no recollection of the conversation described by L.L., and suggested it might have been a friend who was similar in appearance. Her testimony appeared to be unprepared.

In addition, although I accept that the Landlords' daughter lived in the rental unit for only 2 months, I find that compensation is not payable because the rental unit was subsequently occupied by S.S., a Landlord, who continues to live in the rental unit.

In light of my findings above, I order that the Application is dismissed, without leave to reapply.

Conclusion

The Application is dismissed, without leave to reapply.

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 27, 2019

Residential Tenancy Branch