



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for a monetary order for money owed or compensation under the Act and for recovery of the filing fee paid for this application.

The tenants, their legal representative, and the landlord's agents attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence prior to the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and to recovery of the filing fee paid for this application?

Background and Evidence

The evidence showed that this tenancy began on January 1, 2018, for a monthly rent of \$1,395.00. The tenants said the monthly rent at the start of the tenancy was \$1,395.00 and at the end of the tenancy, the monthly rent was \$1,430.00. The tenants submitted a copy of the written tenancy agreement and the notice of rent increase.

The tenants submitted they moved out of the rental unit on February 28, 2019.

The tenants' monetary claim is \$17,160.00 for 12 months' compensation for receiving the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") and for recovery of the filing fee of \$100.00.

In support of this claim, the tenants submitted that they received the Notice from the landlord on December 22, 2018, which listed an end of tenancy date of March 31, 2019. The tenant submitted a copy of the Notice, which was signed by the landlord, and as a reason for ending the tenancy, listed that the rental unit will be occupied by the landlord or a close family member of the landlord.

The tenants submitted that the landlord is not currently using and has not used the rental unit for the stated purpose as they noticed the rental unit was listed on Craigslist in April 2019 for re-rent, showing an availability for May 1, 2019, for a monthly rent of \$1,595.00. The tenants pointed out that the advertised monthly rent was more than they were paying.

The tenants submitted that they are entitled to compensation equivalent to 12 months' rent in the amount of \$17,160.00, as the landlord has not used the rental unit for the stated purpose listed on the Notice.

The tenant's additional relevant evidence included, but is not limited to, Craigslist postings, rent cheque payments, copy of the Notice, and an email to the landlord.

Landlord's agents' response-

In response to my inquiry, the landlord's agent submitted that they are acquainted with the landlord through family member's friendships. The landlord's agent submitted that the landlord is a non-resident of Canada; however, they were familiar enough with the situation to be able to provide the landlord's response.

In support of the Notice, the landlord's agent, PY, said that the landlord issued the Notice to the tenants as she had applied to come to Canada on a student visa. In relation to that, she had used the services of a company to handle the application paperwork for both the student visa and the enrollment in a local school.

PY said that the landlord "must have been notified" by the local company verbally that she was accepted into the courses, which led to the issuance of the Notice.

It was later learned that although the landlord was accepted for enrollment in school, her application for a student visa was subsequently denied, which meant the landlord was not able to move here. The landlord's agent suggested that the landlord would not have asked him to issue the Notice to the tenants unless she, the landlord, had been informed she was verbally approved for enrollment.

The landlord's agent said it was always the landlord's intention to move over; however, as her student visa was declined, she was unable. The landlord rented the rental unit, starting on May 15, 2019, for a monthly rent of \$1,595.00.

The landlord's agents submitted copies of the letter of acceptance into the local school, dated December 27, 2018, a letter January 9, 2019, from the local school acknowledging acceptance for enrollment to provide to the IRRC, and a letter dated April 11, 2019, from the Canadian Embassy refusing the landlord's application for a student visa.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence shows that the landlord issued the tenants a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, and in this case, the landlord listed that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

Section 51(2) provides that if 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 if 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, the

tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice. In this case, the landlord has not presented any evidence claiming extenuating circumstances.

In this case, the undisputed evidence is that the landlord or agents issued the Notice to the tenants on December 22, 2018, for a move-out date of March 31, 2019.

The further undisputed evidence is that the landlord began listing the rental unit for rent in April 2019, for a higher rent and it was re-rented at that higher rent beginning May 15, 2019.

I therefore find that the rental unit was not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in this case, March 31, 2019.

While the landlord's agent, in essence, argued that extenuating circumstances prevented the landlord from using the rental unit for the stated purpose, I find on a balance of probabilities that they did not. In reaching this conclusion, the landlord's own evidence is that she did not have the letter of acceptance into school until sometime after December 27, 2018, which was the date of the letter, or the letter from the Canadian Embassy rejecting her application for a student visa.

I also considered that the landlord's agent was providing hearsay, and not direct, evidence, as he was only able to speculate as to what the landlord was told. I therefore found this testimony unreliable.

I find that at the time the landlord had the Notice issued, there is no evidence that the landlord would ever be approved for either acceptance into a local school or for a student visa. It was landlord's own choice to end this tenancy prior to any approval allowing her to move into the country. As a result, I therefore determined the landlord was premature when she issued the Notice to the tenants.

I find it reasonable that the landlord would wait until she had approval from both the local school and the Canadian Embassy which would allow her to move to Canada before issuing the Two Month Notice, displacing the tenants.

For the above reasons, I therefore find that the rental unit was not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

For the above reasons, I also find the landlord submitted insufficient evidence that extenuating circumstances prevented her from using the rental unit for the stated purpose.

I therefore find the tenants are entitled to monetary compensation equivalent to 12 months' rent.

I therefore grant the tenants a monetary award of \$17,160.00, the equivalent of monthly rent of \$1,430.00 for 12 months.

I also grant the tenants recovery of their filing fee of \$100.00 paid for their application, pursuant to section 72(1) of the Act.

Due to the above, I find the tenant is entitled to a total monetary award of \$17,260, comprised of the equivalent of 12 months monthly rent for \$17,160.00, and the filing fee of \$100.00.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$17,260.

Should the landlord fail to pay the tenants this amount without delay, the tenants may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$17,160.00 and recovery of the filing fee is granted. They have been granted a monetary order for \$17,260.00.

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: October 8, 2019

Residential Tenancy Branch