



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 filed by the tenants for a monetary order equivalent to 12 months compensation pursuant to section 49 and 51 of the Act, and to recover 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.

Issue to be Decided

Are the tenants entitled to a monetary order pursuant to section 51 of the Act?

Background and Evidence

The parties agreed that the tenants received a Two Month Notice to End Tenancy for Landlord's Use of Property and vacated the property on June 1, 2019.

Counsel for the landlord's submits that they are not denying the premises was not used for the stated purpose which was for their daughter moving into the premise; however, they have extenuating circumstances that must be considered.

Counsel for the landlords submit that the landlords in good faith issued the notice to end tenancy as their daughter had planned to move in to the rental unit and they had even arranged for a moving truck to pick up their daughters belonging.

Counsel for the landlords submit the tenant's daughter was happy to be moving in as they were having difficulties security a residence. Counsel submits the landlords' daughter in May 2019, was struggling with mental health issues and was experience significant anger and mood swing.

Counsel for the landlords submit that on May 16, 2019 the landlords' daughter had an outburst that cut all contact with the family. Counsel submits the landlords have not heard from their daughter since May 16, 2019.

The landlord's witness TS testified that their sister was going to move into the property. TS stated that her sister was happy and was excited.

TS testified that their sister had a mental breakdown which they have never seen her talk like this before. TS stated that their sister told them that she never wanted contact with the family again and they have not seen or heard from their sister since May 16, 2019.

Filed in evidence are text messages, videos, and statement by the landlords.

The tenants responded that they do not dispute what the landlords have provided. The tenants stated it would have been nice to be informed prior to them leaving. The tenants confirmed they had secured alternate housing by May 14, 2019.

Analysis

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

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 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

In this matter, the landlords admit that they did not use the premises for the stated purpose. I find the landlords breached the Act.

However, I find that I am satisfied that the landlords have provided me with enough evidence that prevented the landlords from using the rental unit for the stated purpose

In this case, the landlords' daughter was moving into the premise that is supported by the text messages between the family and the confirmation of a moving company being hired. In May 2019, the landlord's daughter was having mental health issue causing mood swing and outbursts of anger. This is supported by text messages between the landlords' daughters

The video submitted by the landlords show the landlord's daughter calling them names and threatening that they would never see her again. The landlords have not seen their daughter since May 16, 2019.

Based on the above, I find the landlords truly intended for their daughter to move into the premises and only due to their daughter mental status and disappearance prevented them for using the premise for the stated purpose. I find it appropriate in this case, to excuse the landlords from paying the tenants the amount required under section 51(2) of the Act.

Therefore, I dismiss the tenants' application for monetary compensation.

Conclusion

The tenants' application is dismissed.

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 11, 2019

Residential Tenancy Branch