



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties confirmed that they had exchanged their documentary evidence. The tenant participated in the teleconference. The landlord was represented by her son.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of twelve months' rent as claimed?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave the following testimony. The tenancy had a monthly rent payable of \$750.00 due on the first of each month. On October 28, 2018 the landlord served the tenant with a Two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenant to move out of the rental unit by December 31, 2018. The ground for the Notice was:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The tenant moved out of the rental unit on January 6, 2019. The tenant testified that he drives by five days a week and has never seen a light on in the unit, drapes open or any sounds coming from the unit. The tenant testified that he has spoken to two of the neighbors and they have not seen anyone use the suite entrance except for when some renovations were being done. The tenant testified that this is clearly a case that the landlord wanted him out and renovated the unit and that the landlord's daughter has not resided in the unit. The tenant seeks twelve months of rent along with the recovery of the filing fee for a total claim of \$9100.00.

The landlord's agent gave the following testimony. The agent testified that his sister; the landlord's daughter, moved in on January 12, 2019 and has continued to reside there since. The agent testified that due to a change in their financial situation, his sister returned home from studying in Korea earlier than expected. The agent testified that the renovations the tenant referred to were done slowly and by the landlord's family themselves.

The agent testified that the renovations were minor and were only for patching and painting the walls and some new flooring in the living room. The agent testified that his sister continued to use the space during the renovations. The agent testified that his sister had access to the main part of the home as there is only a door dividing the suite and home; this would account for the lack of lights on as alleged by the tenant. The agent testified that his sister continually used the suite bedroom and bathroom. The agent submits that the application should be dismissed.

Analysis

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

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (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 twelve times the monthly rent payable under the tenancy agreement.

The applicant seeks payment of compensation in the amount of twelve times the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property

was not used for the stated purpose for ending the tenancy. The tenant provided witness statements that he says corroborates his testimony, however; those parties did not participate in today's hearing and were not available to give their sworn testimony and be subject to cross examination by the landlord.

Although the tenant stated, "I don't think anyone lives there", he has not provided sufficient evidence to reflect that. Conversely, the landlord's agent provided clear, concise, and credible testimony. The agent explained that his sister's financial situation had changed and that she returned home from her studies in Korea sooner than expected. The agent testified that his sister uses the bedroom and bathroom in the suite which is adjoined to the main portion of the house. Based on the above and on a balance of probabilities, the landlord has provided sufficient evidence that his sister has moved in and that the landlord has used the property for the stated purpose as given on the notice to end tenancy.

The tenant has not been successful in their application.

Conclusion

The tenant's application is dismissed in its entirety 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: January 10, 2020

Residential Tenancy Branch