



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

While the tenants attended the hearing by way of conference call, the landlord did not. I waited until 1:41 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenants and I were the only ones who had called into this teleconference.

During the hearing the tenants confirmed that the spelling of the landlord's name on the application was correct. The tenants testified that the landlord was served with their application for dispute resolution package by way of registered mail to the landlord's address on December 24, 2019. The tenants provided a tracking number in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord deemed served with the tenants' application and evidence on December 29, 2019, 5 days after mailing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began approximately 5 years ago, and ended on November 30, 2018. The tenants testified that they were never provide a copy of the tenancy agreement. The tenants testified that the monthly rent was set at \$3,130.00 at the end of the tenancy as supported by their evidentiary materials.

The tenants testified that they had moved out after being served with a 2 Month Notice issued to her by the landlord on October 1, 2018. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse". A copy was included as part of the tenants' evidence.

The tenant is seeking compensation as the landlord did not use the home for the purpose indicated on the 2 Month Notice. The tenants testified that they had discovered that the home was re-rented as of March 1, 2019 to a new tenant. The tenants provided a signed and dated statement from the new tenant to support their claim.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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, as the case may be, 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.

I have considered the testimony and evidence before me, and I find that it was undisputed that the landlord had re-rented the home instead of occupying it. By doing so, the landlord failed to comply with section 49(3) of the *Act*. Accordingly, I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I also find that the tenants are entitled to recover the filing fee for this application.

As the tenant's monetary claims exceeds the maximum allowable claim of \$35,000.00, I issue a monetary award to the tenants in the maximum allowable amount of \$35,000.00 for this application.

Conclusion

I issue a \$35,000.00 Monetary Order in favour of the tenants in compensation for the landlord's failure to comply with section 49(3) of the *Act*.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 21, 2020

Residential Tenancy Branch