



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDCT FFT

Introduction

The matter originally proceeded by way of a hearing on October 9, 2019 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.

On November 25, 2019, the landlord was granted their application for review consideration, and the Decision and Order dated were suspended until the Review Hearing scheduled for January 17, 2020.

The landlord filed the application for review consideration on the grounds that he did not attend the original scheduled hearing as the package was sent by way of registered mail to another party.

Both parties attended this Review Hearing, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As the tenants' original evidentiary materials were not served to the landlord in accordance with section 88 of the *Act* as ordered by the Arbitrator in the Review Consideration Decision, this evidence was excluded. As both parties confirmed receipt of each other's evidentiary materials submitted for this hearing, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Should the Decision and Order granted on October 9, 2019 be confirmed?

Background and Evidence

This tenancy originally began as a fixed-term tenancy on June 1, 2017. The tenant moved out on May 31, 2019 after being served with a 2 Month Notice on March 5, 2019. Monthly rent was set at \$2,500.00, payable on the first of the month.

The tenant is seeking compensation in the amount of \$30,000.00, which is the maximum amount she may apply for under the *Act* for the landlord's failure to comply with section 49 of the *Act*. The tenant feels that the landlord failed to use the home for the purpose indicated on the 2 Month Notice issued to her on March 5, 2019.

The landlord does not dispute that the home was sold on December 4, 2019. The new owners took possession on December 8, 2019. The landlord is disputing the tenant's monetary claim as the landlord complied with the *Act*. The landlord testified that his father had moved into the home on June 2, 2019 as required by *Act* for at least 6 months, but had decided to move out on December 4, 2019 as he was not happy residing there.

The landlord does not dispute that the home was listed for sale, but was done so in order to appease his father. The landlord testified that he hired a random realtor to list the home for sale, but did not want his father moving back to the family home due to family issues. The landlord testified that he had rented a room in the home for 6 months, and the other tenant resided there with his father. The landlord provided a statement from the realtor confirming the presence of his father when he was doing his showings.

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.

Residential Tenancy Policy Guideline #2A provides more clarity about the requirements of section 49 of the Act when ending a tenancy for landlord's use.

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

I find that the landlord has provided sufficient evidence to show that he had met the 6 month occupancy requirement as required by the *Act*. I find that the evidence shows that the landlord's father resided in the home until December 4, 2019 when the home was sold.

Accordingly, I am cancelling the monetary order granted on October 9, 2019. The tenant's application for monetary compensation and for recovery of the filing fee is dismissed without leave to reapply.

Conclusion