



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to 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.

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

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application and evidence. The tenant testified that she did not receive the landlord's evidence package. The landlord testified that she had served her package by way of registered mail, and provided a tracking number in the teleconference. The landlord's evidence was read to the tenant in the hearing, and she testified that she was not opposed to the admittance of this evidence, and proceeding with the hearing. Accordingly, the landlord's evidence package was admitted for this hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Background and Evidence

This tenancy ended on March 30, 2019 after the tenant was served with a 2 Month Notice for Landlord's Use on January 27, 2019. Monthly rent was set at \$749.00, payable on the first of the month. The home consists of two separate suites, and the tenant resided in the lower portion of the home.

The tenant is seeking compensation in the amount of \$8,988.00, 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 January 27, 2019. The tenant testified that her daughter and a neighbour have observed other parties moving in, who were not the landlord's mother. The tenant submitted in evidence statements, and well a photograph.

The landlord does not dispute that her friend had moved into the basement suite. The landlord testified that her friend was going through issues in her relationship and required a place to live immediately as she had no where else to go. Her mother also required a furnished home to move to, and in order to accommodate both parties the landlord moved into the basement suite with her friend, while her mother resided upstairs. The landlord testified that she preferred to reside with her friend rather than her mother for the sake of maintaining an amicable relationship. The tenant testified that at the end of October 2019, her parents had reconciled, and her mother moved back with her father, and the landlord moved back upstairs. The tenant's friend continued to reside downstairs as her tenant.

The landlord provided in her evidence package statements from parties confirming that the landlord's friend had moved in with her into the basement suite, while the landlord's mother resided upstairs. The landlord also provided invoices to show that her mother's car was at the shop for servicing.

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).

The burden of proof is on the tenant to demonstrate that on a balance of probabilities that the landlord failed to use the home for its intended purpose as stated in the 2 Month Notice. Although I accept the observations of the tenant and her witnesses that they had observed other vehicles and parties at the home, I find that this observation does not sufficiently support the lack of occupancy by the landlord or a close family member, especially in light of the landlord's detailed evidence of what had happened after the tenant had moved out. I accept the landlord's testimony and evidence, which supports the fact that the landlord resided in the basement suite with her friend after the tenant had moved out. Although the landlord's friend eventually became the sole tenant in the basement suite, I find that the landlord has met the 6 month occupancy requirement as per RTB Policy Guideline #2A.

I find that the tenant has failed to meet the evidentiary burden on a balance of probabilities to demonstrate that the landlord failed to fulfill her obligations as required by the Act. Accordingly, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed 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: February 27, 2020

Residential Tenancy Branch