



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 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.

Only the tenant's agent appeared at the hearing. The agent provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The agent testified and supplied documentary evidence that the landlord was served with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on December 6, 2019.

The agent had provided tracking information from Canada Post indicating the mail had been signed for and accepted on December 10, 2019. I find the landlord has been duly served in accordance with the Act. 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.

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 tenants agent gave the following undisputed testimony. The agent testified that the tenants are his in laws that moved into the property over thirty years ago. The month to

month tenancy had a monthly rent payable of \$1964.00 due on the first of each month. On July 26, 2019 the landlord served the tenants with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by September 30, 2019. The ground for the Notice was:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenants moved out of the rental but later discovered that the landlord did not move into the rental unit; instead found that the property was undergoing a massive renovation. The agent testified that the landlord had taken out 8 permits at a value of \$250,000.00 to make an addition to the home. The agent testified that he drives by the property regularly and has observed only construction going on and that the home is gutted down to the studs. The agent testified that the home is unoccupied as of this date. The agent requests twelve months compensation for his in-laws as noted under the Act plus the recovery of the filing fee.

Analysis

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.

Based on the undisputed testimony and supporting documentation before me, I find that the tenants have been successful in their application.

The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. I am satisfied that the tenants are entitled to $\$1964.00 \times 12 \text{ months} = \$23,568.00$ plus the recovery of the \$100.00 filing fee for a total award of \$23,668.00.

Conclusion

The tenants have established a claim for \$23,668.00. I grant the tenants an order under section 67 for the balance due of \$23,668.00. This order may be filed in the Small Claims 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: May 01, 2020

Residential Tenancy Branch