



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under section 51 of the Act, and to recover the filing fee.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified that they went to the subject rental unit to personally serve the landlord as they were to be living into the subject property based on the notice to end tenancy; however, they were informed that no one by that name lived at that residence.

The tenant testified that they did a land title search of the subject property and the mailing address for the landlord was listed. The tenant stated that they sent the documents to that address, by registered mail on December 24, 2019, which was returned unclaimed. Filed in evidence is a copy of the land title document of the subject property and Canada post tracking number.

The tenant testified that there was a previous hearing on this issue, which was dismissed with leave to reapply and the landlord was served at the mailing address listed in the land title document. The tenant stated the documents were received by the landlord and the landlord had their agent appear. I have noted the file number of the previous hearing on the covering page of this decision.

In this matter, I accept the evidence of the tenant that they were informed by an occupant of the subject property that the landlord did not reside at the subject property. The tenant sent their package to the mailing address listed on the land title document, which is the same address of the landlord that was used for the prior hearing and was the landlord's home during the tenancy. The package was returned "unclaimed" not "Moved". This leads me to believe the landlord was residing at this address and is attempting to avoid serve.

I find the landlord was deemed to have been served five days after it was mailed, which was December 29, 2019. Refusal or neglect to pick up the package does not override the deem service provision under the Act.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

The tenant testified that they had lived in the rental unit for 24 years. Current rent in the amount of \$2,210.00 was payable on the first of each month. The tenancy ended on December 31, 2018.

The tenant was served with a Two Month Notice to End Tenancy for Landlords Use of Property, issued on July 26, 2018 and vacated the property on 31, 2018.

The reason stated in the Notice was that:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse)

The tenant testified that the landlord did not used the property for the stated purpose. The tenant stated on February 1, 2019 the landlord entered into a new tenancy agreement with a Ltd company, which rents out bedrooms and suites. The tenant stated that when they rented the subject property it was for the entire premises. Filed in evidence is a copy of the tenancy agreement between the landlord and the Ltd company.

The tenant testified that the Ltd company had a rental listing online for the basement suite, which showed it was available for June 1, 2019. The tenant stated that this portion of the house was subject to the notice to end tenancy as this was under their tenancy agreement. The tenant stated that they emailed the Ltd company and were informed there was a waitlist as it was rented. Filed in evidence is a copy of the advertisement and the email communication.

The tenant testified that they then asked the Ltd company about the upper premise as they were told it was a shared accommodation and they were informed to fill out an application. The tenant stated that although the email correspondence indicated that it is shared with the owner that they had confirmed with other occupants that no such person lived there. The tenant stated that during their 24-year tenancy they never meet or spoke with the owner and find it unlikely that the landlord would now be living with tenants.

At the hearing the tenant was asked on how they obtain the tenancy agreement between the landlord and the Ltd company. The tenant stated that it was provided by the landlord at the earlier hearing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities I find as follows:

Section 51 of the Act, states:

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

I accept the undisputed testimony of the tenant and the documentary evidence that the landlord entered into a tenancy agreement on February 1, 2019, with a Ltd company to rent the premise. Monthly rent was fixed, and a security deposit paid. This is not a contract for service, which would be expected, if they were hired to simply find the landlord roommates. This is clearly a contract to rent and not a contract to provide a service.

The copy of the Ltd website filed in evidence supports that the purpose of this company is to rent rooms and suites. This leads me to believe that the landlord does not live at the subject property and is supported by the tenant's testimony that when they went to the subject property, they were told that the landlord does not live there.

Further, the Ltd company posted an advertisement to rent the lower portion of the subject property commencing June 1, 2019. This area of the subject property was part of the tenant's tenancy agreement. The tenant contacted the company and they were informed the unit was rented and there was a waitlist.

Even if the landlord was living in the subject premise and renting rooms in the upper portion of the subject property, which I find highly unlikely, the advertisement filed in evidence supports that the lower portion of the subject property was not a shared accommodation with the owner as it had its own kitchen and bathroom., I find the landlord has breached section 51 of the Act, as the earliest date possible to give exclusive possession to anyone was July 1, 2019.

As I found the landlord has breached the Act, I find the tenant is entitled to receive compensation that equals twelve times the monthly rent. Therefore, I find the tenant is entitled to compensation in the total amount of **\$26,520.00**. ($\$2,210.00 \times 12 = 26,520.00$)

I find the tenants have established a monetary order in the amount of **\$26,620.00** comprise of the above amount and the cost of \$100.00 to recover the cost of the filing fee from the landlords.

This order is enforceable in the Provincial Court (Small Claims) should the landlords fail to pay the monetary order forthwith. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for compensation pursuant to section 51 of the Act is granted.

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 29, 2020

Residential Tenancy Branch