



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that its email as set out in the Tenant’s application is correct.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on September 1, 2015 and ended September 3, 2019. The security deposit has been dealt with. Rent of \$2,500.00 was payable on the first day of each month with the rent increased to \$2,600.00 as of March or April 2017. The Landlord gave the Tenant a two month notice to end tenancy for landlord’s use dated July 1, 2019 (the “Notice”) with an effective date of September 1, 2019. The reason set out on the Notice is that the landlord or a close family member of the Landlord was to occupy the unit. The Landlord’s son was to move into the unit.

The Tenant states that the Landlord's son did not use the unit for at least 6 months. The Tenant states that the unit was advertised for rent between December 16, 2019 and at least January 31, 2020. The Tenant provides copies of the advertisements that set out immediate occupancy for rents of \$3,900.00 and \$4,000.00. The Tenant states that while the son may have moved into the unit it shortly thereafter advertised the unit for rent and that this is evidence of a bad faith intention to occupy the unit. The Tenant states that when the Notice was served the Landlord informed the Tenant that the son may rent out rooms to a student to help out with costs. The Tenant claims compensation of \$31,300.00.

The Landlord states that on September 7, 2019 the son did move into the unit and continued to reside in the unit until March 2020 when a tenant rented the unit for monthly rent of \$3,800.00. The Landlord provides copies of utility bills as evidence to support the residence of the son at the unit. The Landlord states that it was unaware that the unit was advertised until the Landlord was informed about the advertisement in mid January 2020 from a tenant in a different unit. The Landlord states it then confronted its son who informed the Landlord that he was trying to rent out the unit and was going to move into the Landlord's residence. The Landlord states that the advertisement was taken down immediately. The Landlord states that the unit is above another suite and that the tenants in that lower suite informed the Landlord that the son was living in the unit.

The Tenant states that it spoke with the tenants in the lower suite and that they informed the Tenant that they believed the unit was being used as an Airbnb. The Tenant states that it does not recall if the tenants were asked if the son was living in the unit or if they told the Tenant anything about the son. The Tenant states that one advisement refers to groups seeing the unit and argues that the advertisements used expert terms to describe the unit. The Tenant argues that the son, as a young man, would not have used these terms. The Tenant argues that the terms indicates that an

experienced landlord worded the advertisement. The Landlord denies that its son would not have used such terms and states that his son has worked in the construction industry for several years. The Landlord argues that the Tenant has not provided any evidence that its son did not live in the unit and that the Tenant had multiple opportunities to check if the son was living in the unit and did not do.

Analysis

Section 51(2) of the Act provides that a landlord must pay the tenant 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.

There is no requirement under this section of the Act for the Landlord to have good faith intentions to occupy the unit. This section requires the occupation for residency purposes as stated in the Notice. The Tenant has the burden of proof to substantiate its claim. The Tenant provided no evidence that the son did not move into the unit and did not occupy the unit. The Tenant gives evidence that the son may have moved into the unit. The Tenant only provided evidence of the unit being advertised some 4 months after the effective date of the Notice. Given the Landlord's evidence, supported by the utility bills, that the son did occupy the unit until March 2020, I find on a balance of probabilities that the Tenant has not substantiated that the son did not reside in the unit. I note that the Landlord's evidence of the advertisement by the son held a ring of truth and for this reason I accept that the son acted in error without the Landlord's knowledge and that this error was corrected immediately after it became known by the Landlord. The Tenant's application is dismissed.

Conclusion

The Tenant's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 25, 2020

Residential Tenancy Branch