



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 an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act*, (the “*Act*”), for a monetary order for money owed or compensation for damage or loss, and to recover the filing fee for their application. The matter was set for a conference call.

One of the Landlords, the Landlord Counsel (the “Landlords”) and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss, pursuant to section 51 of the *Act*?
- Are the Tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on January 8, 2010. Rent in the amount of \$2,055.00 was to be paid by the first day of each month, and at the outset of

the tenancy, the Tenants paid a \$1,000.00 security deposit. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

All parties agreed that the Landlords served the Tenants a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") dated February 23, 2018. The Notice indicated that the Tenants were required to vacate the rental unit as of April 30, 2018. The reason checked off by the Landlords within the Notice was as follows:

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

Both parties agreed that the Tenants moved out of the rental unit, in accordance with the Notice on April 15, 2018, and that the Landlords returned the security deposit to the Tenants. The Tenants submitted a copy of the Notice into documentary evidence.

The Tenants testified that they found out that the Landlord's family member had bot moved in as indicated on the Notice, and that the rental property had been advertised as available as of January 2019. The Tenants are requesting compensation for the rental property not being used as indicated on the Notice.

The Landlords testified that their mother, who they had planned to move into the rental unit, so they would be close to the hospital for treatment, had suddenly passed away on March 5, 2018. The Landlord agreed that they had listed the rental unit as available for rent in January 2019 and had secured a new renter for the property as of June 1, 2019. The Landlords submitted a copy of the death certificate into documentary evidence.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51(2) of the *Act*, which states the following:

Tenant's compensation: section 49 notice

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 agreed-upon testimony of these parties that the Landlords served the Notice to end the tenancy in compliance with sections 49(3), and that the Notice had an effective date of April 30, 2018. I also accept the testimony of the Tenants that they had moved out of the rental unit in accordance with the Notice on April 15, 2018.

In this case, the Tenants have claimed for the additional 12-months of compensation, claiming that the Landlords did not use the rental unit for the stated purpose on the notice.

I accept the Landlords' testimony that the Landlord did not use the rental unit for the stated purpose and did re-rent the rental unit as of June 1, 2019. However, I also accept the testimony of the Landlords that they had planned to move their mother into the rental unit but that their mother had passed away and was therefore unable to move into the rental unit.

Section 51 (3) of the Act states the following:

Tenant's compensation: section 49 notice

51 (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.*

I find that the death of the family member, who had been intended to move into this rental unit, to have been an extenuating circumstance that was out of the control of the Landlords. Accordingly, I find that it is appropriate to excuse these Landlords from having to pay the amount required under section 51 (2) of the *Act*, and I dismiss the Tenants application for this compensation.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the filing fee paid for this application.

Conclusion

I dismiss the Tenants application for compensation pursuant to section 51(2) of the *Act*, due to extenuating circumstances.

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: August 20, 2020

Residential Tenancy Branch