



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 Tenant 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.

The Tenant and the Landlord’s Counsel (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they had exchanged the documentary evidence that I have before me.

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

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

Background and Evidence

The Tenant testified that their tenancy began on October 1, 2017. Rent in the amount of \$2,650.00 was to be paid by the first day of each month.

All parties agreed that the Landlords served the Tenant with a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") on November 15, 2019. The Notice indicated that the Tenants were required to vacate the rental unit as of January 31, 2020. 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 Tenant moved out of the rental unit, in accordance with the Notice on February 1, 2020, and that the Landlords returned the security deposit to the Tenant.

The Tenant testified after they moved out, they found out that the Landlords had renovated the rental unit. When asked, by this Arbitrator the Tenant testified that they did not know if the Landlord had moved into the property after the repairs were finished.

The Landlord testified that they had planned to move into the rental unit in early February, but that due to a delay in the repair work, caused by COVID-19, they were unable to move in until March 25, 2020. The Landlord confirmed that they were currently living in the rental property.

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:

Section 51 of the old legislation stated:

Tenant's compensation: section 49 notice

- 51** (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 double the monthly rent payable under the tenancy agreement.

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 have reviewed the testimony and documentary evidence submitted by the Tenant and the Landlord, and I find, on a balance of probabilities, that the Landlord has used the property for the purpose stated on the Notice.

I acknowledge that the Landlords did not finish moving into the rental unit until March 25, 2020. However, I accept the Landlord's testimony that they wanted to complete repairs before they finished moving. I find that the Landlord did move into the rental unit within a reasonable period after the effective date of the notice and is currently using the rental unit for the stated purpose of the Notice.

Therefore, I find that the Tenant has not proven their claim under section 51(2) of the *Act*. Accordingly, I dismiss the Tenant's claim for compensation under section 51(2) of the *Act*.

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

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: August 24, 2020

Residential Tenancy Branch