



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ascent Real Estate Management
Corporation and [tenant name suppressed to protect privacy]

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.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on October 1, 2011 and ended on October 15, 2019. Rent of \$1,003.00 was payable on the first day of each month. The security deposit has been dealt with. On September 12, 2019 the Landlord gave the Tenant a two month notice to end tenancy for landlord's use (the “Notice”). The Notice sets out that the tenancy was ended as the Landlord or a close family member of the landlord is to occupy the unit.

The Tenant states that since moving out of the unit nobody has moved into the unit.

The Tenant states that they have repeatedly drove by the unit, stopping to knock on the

door and nobody was ever there. The Tenant states that they checked again about 1.5 months ago and a couple of weeks ago and the unit was still empty. The Tenant states that the lights are always off with the blinds closed and that the grass has not been cut. The Tenant states that about 1.5 months ago they also spoke with the tenants residing in the upper unit and these persons informed the Tenant that nobody has move into the unit.

The Landlord who acts as agent (the "Agent") states about three weeks after the Tenant moved out the person they represent for the rental unit picked up the keys to the unit and informed the Agent that its daughter was going to move into the unit. The Landlord states that they contacted this person again about 3 months ago and was told again that the daughter was going to move into the unit.

Analysis

Section 51(2) of the Act provides that 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.

The Tenant's evidence of the unit being vacant, while unsupported, held a ring of truth. The Landlord did not provide any evidence of occupation, only of the intent to occupy. For these reasons and since it has been well over 6 months since the tenancy ended, I find on a balance of probabilities that the Tenant has substantiated that the rental unit was not used at all for its stated purpose. The Tenant is therefore entitled to the compensation claimed of **\$12,036.00**.

Section 51(3) of the Act provides that 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.

As there is no evidence from the Landlord of any extenuating circumstances that prevented the occupation of the unit, I decline to excuse the Landlord from paying the compensation the Tenant has been found entitled to.

As the Tenant has been successful with its claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$12,136.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$12,136.00**. If necessary, 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 Act.

Dated: September 29, 2020

Residential Tenancy Branch