



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 Tenants 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

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy of a one-bedroom basement suite plus an extra basement bedroom (the “Rental Unit”) started under written agreement on November 1, 2016 and ended on August 30, 2018. For the last year of the tenancy rent of \$1,664.00 was payable on the first day of each month. The security and pet deposits have been dealt with. The Landlord ended the tenancy of Rental Unit by issuing a notice to end tenancy for landlord’s use (the “Notice”). The reason stated on the Notice is that the Landlord or a close family member of the Landlord will occupy the unit. The effective date of the Notice is August 31, 2018. The Landlord’s son commenced occupation of the extra basement bedroom as of September 16, 2018 and the one-bedroom suite portion of the Rental Unit was rented to another tenant as of September 2018 continuing to March 2020. The one-bedroom suite portion was again rented as of August 2020. The son continues to occupy the extra bedroom portion of the Rental Unit.

The Landlord states that although they only required the extra bedroom for their son, they had to end the tenancy of the Rental Unit. The Landlord states that when discussing the ending of the tenancy with the Tenants the Tenants did offer to rent only the one-bedroom portion of the Rental Unit, however this was not possible as the one-bedroom portion was not suitable for two occupants. The Landlord states that they believed that they could end the tenancy for the entire Rental Unit and still rent out the one-bedroom suite portion of the Rental Unit.

The Tenant claims the cost of a mailbox to receive materials for the proceedings.

Analysis

Section 51 of the Act provides as follows:

(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.

(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.

Given the Landlord's evidence that a portion of the Rental Unit, the one-bedroom suite, was rented immediately after the end of the tenancy, I find that the Landlord did not use the Rental Unit as indicated in the Notice. Evidence that the one bedroom suite portion of the Rental Unit was not suitable for as a rental for two occupants or the evidence that the Landlord's son did not occupy or need the entire Rental Unit is not evidence of any extenuating circumstances that prevented the Landlord from occupying the Rental Unit for the period of time required under the Act. For these reasons I find that the Tenants have substantiated their claim to **\$19,968.00** (1,664.00 x 12). As there is nothing in the Act that entitles a party to costs of proceedings other than the filing fee, I dismiss the claim for mailbox rental. As the Tenants have been successful with their primary claim, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$20,068.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$20,068.00**. 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: December 3, 2020

Residential Tenancy Branch