



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.

Both of the Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlords 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.

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.

Preliminary Matter- Caution

During the hearing, the Landlords were cautioned several times regarding personal conduct, outbursts and the interruption of the other parties’ testimony.

The parties to this dispute were advised twice of the expected appropriate conduct during these proceedings. When the Landlord continued to interrupt these proceedings, their phone had to be muted twice in order to restore order to these proceedings.

Issues to be Decided

- Has there been a breach of Section 51 of the *Act* by the Landlord?
- Is the Tenant entitled to compensation pursuant to section 51 of the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

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 July 1, 2016. The parties agreed that rent in the amount of \$1,763.00 was to be paid by the first day of each month. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

All parties agreed that the Landlords served the Tenant a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") on May 31, 2018. The Notice indicated that the Tenant was required to vacate the rental unit as of August 31, 2019. 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 August 31, 2018, and that the Landlords returned the security deposit to the Tenants. The Tenants submitted a copy of the Notice into documentary evidence.

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

The Landlords testified that their parents, who they had planned to move into the rental unit, had changed their mind, deciding not to move here from Mexico. The Landlords 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 February 2019, at an increased rent of

\$2,100.00 per month. The Landlords submitted a copy of the new tenancy agreement into documentary evidence.

The Landlords argued that they should not have to pay the compensation due under the Act, as they could not force their parents to move here and that it was not their fault their parents changed their mind.

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 and that the Notice had an effective date of August 31, 2018. I also accept the testimony of the Tenant that they had moved out of the rental unit in accordance with the Notice on August 31, 2018.

Additionally, I accept the testimony of the Landlords that their parents decided not to move to Canada and did not move into the rental property as planned. I also accept the Landlords' testimony that they re-rent the rental unit as of February 2020.

Consequently, I find that the Landlords are in breach of section 51 of the *Act*, as they did not use the property for the stated purpose on the Notice.

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 acknowledge the testimony of the Landlords that they could not force their parents to move into the rental unit when they changed their minds about moving to this country. However, based on the Landlords' own testimony and sworn statement, I find that these Landlords issued this notice in the hope that their parents would immigrate to this country. I find that there is a distinct lack of supporting documentary evidence, i.e. plane ticket or immigration paperwork, to support the Landlords' claim that there was a firm plan for their parents to move into the rental unit. Additionally, I find the Landlords' argument that their parent's decision to not move to be insufficient cause to excuse them from having to pay the compensation due under section 51 of the *Act*, as the act of merely changing one's mind is not an extenuating circumstance.

Accordingly, pursuant to section 51 of the *Act*, I find that the Tenant has successfully proven they are entitled to compensation for the Landlords' breach of the *Act*. Therefore, I must grant the Tenant a money order in the amount of \$21,156.00, the equivalent of 12 months rent under this tenancy agreement, as 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 find that the Landlords are in breach of section 49 and 51 of the *Act*, as they did not use the property for the stated purpose on their Notice.

I grant the Tenant a Monetary Order in the amount of \$21,256.00. The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: December 14, 2020

Residential Tenancy Branch