



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via email on May 19, 2021, however the tenant stated that the email went to her "spam" folder as it was sent by the landlord's different email account. The tenant was given a few minutes to review the evidence attachments. The tenant stated that she was familiar with the submitted documents and that there was no issue in proceeding with the hearing. As such, both parties were deemed sufficiently served as per section 90 of the Act with the notice of hearing package(s) and the submitted documentary evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$16,900.00 for compensation under section 51 of the Act equal to 12 times the monthly rent of \$1,400.00 and \$100.00 for recovery of the filing fee.

The tenant provided written details which states,

Unit sold by previous owners. Agreement part of the sale confirmed via both selling & purchasing realtor new owners keeping tenant due to rental income needed to secure secondary lending mortgage. Sellers discarded other, higher offers that wanted to remove the tenant to ensure tenant stayed. I was served with a notice to vacate for owner use of property day of possession. Realtor confirmed that the new owners are doing extensive renovation. Day after departure contractor entered unit to renova.
[reproduced as written]

Both parties confirmed the tenant was served with a 2 month notice to end tenancy for landlord's use of property dated January 11, 2021 which displays an effective end of tenancy date of March 31, 2021. The reason selected on the notice states:

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

The child of the landlord or landlord's spouse.

The tenant stated that she was told verbally by her original landlord's that the property was only being sold if the purchaser's would continue to allow the tenant to continue her tenancy.

The landlord disputes the tenant's claim arguing that the notice was issued and served by the landlords to allow their child to occupy the rental unit. The landlord stated that their child occupies the rental unit.

The tenant stated that she does not have any evidence to show that the landlords' child does not occupy the rental unit. The tenant does state that the rental unit was undergoing renovations after the tenancy had ended.

I note for the record that neither party referred to any of the submitted documentary evidence files.

Analysis

Section 51 of the Act states in part that a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord an amount equal to 12 times the monthly rent payable under the tenancy agreement if 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 the rental unit is not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case both parties confirmed that a 2 month notice dated January 11, 2021 was issued and served to the tenant by the landlords for landlord's use. Both parties confirmed the reason for the notice being issued was that their child will occupy the rental unit. The landlords provided undisputed affirmed evidence that their child occupies the rental unit. The tenant stated that she did not have any evidence that the landlords' child does not occupy the rental unit. The tenant's only argument is that she was verbally told by the original landlord that the new owners would continue the tenancy as they would require a renter due to mortgage requirements.

Based upon the undisputed affirmed evidence of both parties I find that the tenant has failed to prove her claim. The tenant has not provided sufficient evidence the landlords' child does not occupy the rental unit contrary to the notice to end tenancy dated January 11, 2021 which was issued for that reason. On this basis, the tenant is not entitled to compensation under section 51 of the Act as the landlords' child is occupying the rental unit.

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: June 07, 2021