



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under section 51(2) of the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed they were not making an unauthorized recording of the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation pursuant to section 51 of the Act?

Background and Evidence

The tenancy began on May 15, 2003. Current rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$325.00 was paid by the tenant. The landlord subject to this dispute took possession of the property in August 2020, when they purchased the premises.

The parties agreed that the tenant was served with a Two Month Notice to End Tenancy for Landlords Use of Property, issued on August 17, 2020, with a vacancy date of October 31, 2020. The tenant vacated the property earlier on September 29, 2020, in accordance with the Act.

The reason stated in the Notice was that:

- The rental unit will 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 tenant testified that they discovered that the rental unit was advertised for rent in February 2021, with an available date of March 1, 2021. The tenant stated that they do not know if it was actually rented; however, the advertisement leads them to believe it was and this was within the six-month period which is contrary to the Act. Filed in evidence is a copy of the advertisement.

The landlord testified that they original bought the property because they had been recently divorced and had to move from the mainland to an area that housing was more affordable. The landlord stated that this property was ideal for her and her younger child as the basement unit had easy access to the backyard and they could rent out the upper portion of the home to help with the mortgage.

The landlord testified that they also have another older child that lives with her ex-husband on the mainland, and the child has been having mental health issues since the divorce and she regularly has to travel back and forth. The landlord stated that they did advertise the rental unit at that time because their ex-husband was threatening her that they would be leaving and going back to his home country leaving their older son behind on the mainland.

The landlord testified that their ex-husband did not leave and as a result they did not rent the rental unit. The landlord stated that they have been living in the rental unit since October 2020 and are still living in the premises. Filed in evidence are divorce proceedings, doctor letters for the older child, letter of enrolled programs of the landlord's younger child, letter from upper tenant stating landlord is living in the basement unit, which is the subject of this dispute, Government ID of the landlord showing the rental unit address.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 51(2) of the Act the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, an amount that is the equivalent of

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 that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case the tenant had found an advertisement of the rental unit in February 2021. While I accept the tenant had the right to make this application and with no other evidence to the contrary from the landlord would lead me to believe the landlord was no longer occupying the premises.

However, simply advertising the rental unit is not a breach of the Act. The only thing I must consider is did the landlord use the premises for the stated purpose for at least six months.

In this case, the landlord has provided an explanation of why they advertised the premise at that time, which was reasonable under the circumstance. The evidence of the landlord was they did not rent the premises and has been living there in excess of six months. This is supported by the landlord's documentary evidence, which include registration programs of the landlord's child in local school programs, receipts, letter from upper tenant confirming the landlord is living in the lower unit, and various other documents.

Based on the testimony and supporting evidence of the landlord, I find the landlord has proven they have complied with the reasons stated in the Notice. Therefore, I must dismiss the tenant's application without leave to reapply.

Conclusion

The landlord has proven they have used the premises for the stated purpose for at least six months. Therefore, I dismiss the tenant's application.

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: July 08, 2021

Residential Tenancy Branch