



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 and an amended 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 Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on September 9, 2021, in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Hearing Package on September 14, 2021. The Tenants served additional evidence and the amendment to the Landlord by registered mail on February 16, 2022. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on January 1, 2021 and ended on April 1, 2021. The tenancy ended as a result of the Landlord giving the Tenants a two month notice to end tenancy for landlord's use dated February 25, 2021 (the "Notice"). The Notice set out an effective date of April 30, 2021. The reason set out on the Notice is that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give this notice because the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit.

The Landlord informed the Tenants about a month after the end of the tenancy that the purchaser did not come up with the funds and that the unit was not sold. Although the Landlord informed the Tenants that they could move back into the unit the Tenants had already moved and unpacked in their new unit. The Tenants provide a copy of a land title search dated February 7, 2022 showing no transfers of the property since 2008. The Tenants claim \$850.00 x 12 months.

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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
 - (b) using the rental unit, except in respect of the purpose specified in section 49
- (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Based on the Tenant's undisputed evidence that the unit was not sold and occupied by the purchaser I find that the Tenants are entitled to the compensation claimed of **\$10,200.00** (\$850.00 x 12). As there is no evidence of any extenuating circumstances, I find that the Landlord is not entitled to be excused from paying this compensation. As the Tenants' claim has been successful, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$10,300.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$10,300.00**. 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: March 08, 2022

Residential Tenancy Branch