



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Act for the equivalent of two months rent under section 51(2). The tenant appeared but the landlord did not appear.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord ended the tenancy for landlord's use and if so:

- Was a two-month notice for Landlord Use issued, served and acted upon in compliance with the Act?

(1) If so were steps taken by the landlord to accomplish the stated purpose given for ending the tenancy under section 49 within a reasonable period after the effective date of the notice?

The burden of proof is on the tenant in regards to proving that the Landlord issued the notice ending of the tenancy and did not comply with the Act by changing the rental unit for the use stated.

Background and Evidence

The tenant testified that the tenancy began in 1996 and ended in December 2008. The monthly rent was \$1,456.00. No tenancy agreement was submitted into evidence. Submitted into evidence was a copy of an email communication from the tenant apparently sent to "HRSTO", dated October 9, 2008 describing interactions with the landlord. No copy of the response to this communication was submitted. Also submitted into evidence was a page containing copies of rental advertisements from google on a page dated April 30, 2009, a copy of a rental advertisement from Craigslist, a copy of a real estate advertisement with a photo of the subject address.

The tenant testified that, although the landlord had ended the tenancy based on landlord's use stating that the landlord would be occupying the unit, the landlord did not occupy the unit as stated. Therefore the tenant was seeking the equivalent of two month's rent in compensation under section 51(2) of the Act for a total claim of \$2,912.00.

The tenant provided evidence that the landlord was served the Notice of Hearing by registered mail. However, the landlord failed to appear.

Preliminary Matter

At the outset of the hearing, it was evident that the tenant had neglected to submit a copy of the Two-Month Notice into evidence. The tenant stated that they were unable to find a copy of the two-month notice because of all of the disruption involved in moving. The tenant requested an opportunity to submit into late evidence a copy of the Two Month Notice signed and served by the landlord to support the claim.

Residential Tenancy Rules of Procedure, Rule 3.1, states that all evidence must be served on the respondent and Rule 3.4 requires that the applicant must file copies of all available documents, or other evidence at the same time as the application is filed, or if not possible, at least (5) days before the dispute resolution proceeding. However, despite these provisions, the tenant's request was granted. I found that the late

provision of this particular piece of missing evidence would not be prejudicial to the respondent, because the respondent landlord would already be aware of the Two-Month Notice and would have a copy of the Notice in question on record. Therefore, the tenant was provided with a fax number and the decision for the hearing was held in abeyance pending the receipt of this critical evidence from the tenant.

On September 22, 2009 additional evidence was received by the applicant consisting of various items and a written statement from the tenant. However, no copy of the purported Two-Month Notice to End Tenancy for Landlord's Use was included in the late evidence.

Analysis

Section 49(3) of the Act provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. This was the stated purpose for the use of the unit and the reason given for ending the tenancy.

Section 51(2) of the Act states that in addition to the amount payable under section 51(1), the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

I accept that the landlord was served with the Notice of Hearing and I also accept as a fact that the tenancy relationship did exist. In regards to the claim, however, the burden of proof is on the tenant to establish that the Two-Month Notice to End Tenancy for Landlord's was served on the tenant ending the tenancy and that the claimed use stated on this Notice was not followed, contrary to the Act. Accordingly it is necessary that the

tenant provides a copy of the notice upon which the tenant intends to rely for the purpose of these dispute resolution proceedings.

In this instance, the tenant failed to submit into evidence a copy of the Two-Month Notice to End Tenancy for Landlord Use, despite being granted the advantage of extra time to submit the document

I find that the tenant's claim is founded on the Two Month Notice and that, in the absence of evidentiary support, the tenant's verbal testimony as to the existence and the content of this document does not suffice to meet the requisite burden of proof. .

Conclusion

Based on the above, I find that the applicant tenant has not succeeded in sufficiently meeting the tenant's burden of proof to support the claim. Accordingly, I hereby dismiss the tenant's application without leave to reapply.

September 2009

Dispute Resolution Officer