



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under 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 to cross-examine the other party, and make submissions at the hearing.

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

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to compensation under the Act?

Background and Evidence

The tenancy began February 1, 2011. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenant. The tenancy ended on May 31, 2012.

The parties agreed the tenant was served with a two month notice to end tenancy for landlord's use of property (the "notice") issued on April 28, 2012. The parties agreed the tenant accepted the notice and moved from the rental unit on May 31, 2012.

The tenant testified the landlord did not use the unit for the intended purpose stated in the notice. The tenant stated the landlord's real estate agent was coming in and showing the unit while she was still living in the unit. The tenant stated on July 18, 2012, she found an advertisement for the unit and it stated the unit had been recently renovated and rent was increased by \$300.00 per month. Filed in evidence is a copy of

the advertisement by the real estate company. Filed in evidence is a copy of the advertisement of the rental unit dated July 18, 2012.

The landlord testified she moved into the unit due to matrimonial difficulties and was going to sell the property. The landlord stated due to the real estate markets the unit would have sold at a loss and financially they were unable to keep the property on the market. The landlord stated she had the unit renovated because it was her intent to reside in the unit. However, later she and her partner reconciled.

Analysis

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

Tenant's compensation: section 49 notice

- 51 (2) In addition to the amount payable under subsection (1), if
- (a) 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
 - (b) 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, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[Emphasis added.]

In this case, the documentary evidence supports the tenant's application that the landlord did not use the property as stated in the notice.

The reason in the notice states:

"The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

[Reproduced as written]

Before the tenant vacated the rental unit it was advertised for sale, however, due to the real estate market and the depreciated value of the unit, the listing was removed. Six weeks after the tenant vacated the unit, it was advertised for rent. The advertisement

submitted into evidence supports the unit was recently renovated and rent was significant increase. I find the landlord breached the Act, by not using the rental unit for the stated purpose in the notice as required by the Act.

Section 51(2)(b) provides that if a landlord does not comply with section 51 of the Act the landlord must pay the tenant the equivalent of double the monthly rent payable under the tenancy agreement. The legislation does not provide any flexibility on this issue.

Therefore, as I have found the landlord has breached the Act, the tenant is entitled to compensation of double the monthly rent.

Conclusion

Having made the above findings, I must order, pursuant to section 51 and 67 of the Act, that the landlord pays the tenant the sum of \$1,950.00, the equivalent of double the monthly rent (\$950.00) and the \$50.00 filing fee.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: November 23, 2012.

Residential Tenancy Branch