



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act and to recover the cost of the filing fee from the landlord.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on July 27, 2013, a Canada post tracking number was provided as evidence of service. The tenant stated the Canada post track history indicated the package was successfully delivered to the landlord on August 3, 2013. I find that the landlord has been duly served in accordance with the Act.

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.

Issues to be Decided

Is the tenant entitled to compensation under the Act?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenancy began May 1, 2011. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$625.00 was paid by the tenant. The tenancy

ended on November 30, 2012, as a result of the tenant receiving a 2 Month Notice to End Tenancy for Landlord use of Property, issued on September 1, 2012. Filed in evidence is a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant testified the landlord did not use the unit for the intended purpose stated in the notice. The tenant stated on November 20, 2012, she found an advertisement for the rental unit on a local popular website and the rent was increased by \$250.00 per month. Filed in evidence is a copy of the advertisement.

The tenant testified that they had noticed in December 2013, that someone was moving into the rental unit. The tenant stated they went and spoke to the new tenant and they confirmed they were not related to the landlord. The tenant stated the new tenant informed them that they responded to the landlord's advertisement.

The tenant testified that On March 7, 2013, the parties attended a dispute resolution hearing and at that hearing the landlord admitted that a family member was not moving into the unit. Filed in evidence is a copy of the decision date March 7, 2013.

The witness for the tenant testified that they attend the rent unit in December 2013, with the tenant and they both spoke to the new tenant, who confirmed that they were not a family member of the landlords.

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]

In this case, the tenant had filed as evidence a copy of an advertisement dated November 20, 2012. In the advertisement the rental unit was posted for rent and the monthly rent was significantly higher. The evidence of the tenant and the witness for the tenant was that in December 2012, they spoke to the new tenant residing in the rental unit and it was confirmed that they were not a family member of the landlord and that they had merely responded to the advertisement.

Further, on March 7, 2013, at a previous dispute resolution hearing which both parties attend the landlord confirmed that a family member was not moving in to the rental unit.

In light of the above, I find the landlord has 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 **\$2,550.00**, the equivalent of double the monthly rent (\$1,250.00) 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 4, 2013

Residential Tenancy Branch

