



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, SS, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for different service – Section 71; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on in 2005 and ended on January 31, 2013. Rent of \$1,865.25 was payable monthly. The tenancy ended pursuant to the Landlord’s notice to end tenancy for landlord’s use (the “Notice”) and the son of the Landlord was to occupy the unit. The effective date of the Notice was January 31, 2013.

The Tenant indicates that the unit underwent some renovations, was never occupied by anyone, and was advertised for rent as late as April 2014. The Tenant claims double the monthly rental rate.

The Landlord states that the house containing the unit was found by the City to be out of compliance with the permits requirements in relation to an extension that was present at the time of the purchase. The Landlord states that there was no disclosure about the lack of permitted renovations on the house at the time of the sale. The Landlord states that the City ordered the Landlord to make no renovations until permits were obtained and that they would possibly have to remove the pre-existing extension from around the kitchen area. The Landlord states that after an appeal the City determined, on or about September 26, 2013, that the Landlord did not have to remove or alter the extension. The Landlord indicates that while waiting to determine what could be done to the unit their son found another rental and signed a one year lease expiring June 2014. The Landlord also states that the girlfriend did not want to move into the unit. The Landlord confirms that the son will not move into the unit and that the unit has been advertised for rent since April 2014.

Analysis

Section 51(2) (b) of the Act provides that if a rental unit is not used for the stated purpose for ending the tenancy 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. It is clear that the unit was never occupied by any member of the Landlord's family. While the City requirements may have created a reasonable delay for occupation of the unit, given that the removal of the extension was known to be no longer required by the end of September 2013, that the unit has since been advertised for rent, and that there is no intention for the son to occupy the unit, I find on a balance of probabilities that the unit was not used for the purpose stated in the Notice after a reasonable time and that the Tenant has substantiated an entitlement to **\$3,730.50**. The Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,780.50**.

As no evidence was raised in relation to the request for different service and considering the Landlord's attendance at the hearing, I dismiss this claim.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,780.50**. 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 *Residential Tenancy Act*.

Dated: June 12, 2014

Residential Tenancy Branch

