



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

Only the tenant/applicant attended the hearing. He gave sworn testimony that he had served the landlord by registered mail to his service address provided on the Notice to End Tenancy (which was the address in dispute) and it was returned unclaimed. The registered mail receipt is in evidence. He said the address on the tenancy agreement was an agent's address and the agent told him that he no longer worked for the landlord as the property was sold. The landlord had given the tenant no other address for service. The agent told the tenant to forward the application to the realtor which he did and asked that it be forwarded to the landlord. I find the tenant made every effort to serve the landlord and I find providing a copy to his realtor is sufficient substituted service pursuant to section 71 of the Act. I find the landlord is possibly out of the country and had provided no service address to the tenant, other than the address of the unit the tenant occupied. The tenant requests pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to compensate the tenant with double the rent pursuant to sections 49 and 51 as the landlord did not use the unit according to his stated purpose.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord did not use the unit for the stated purpose in the section 49 Notice and he is entitled to double the monthly rent pursuant to section 51 of the Act?

Background and Evidence

Only the tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenant said they were given a two month Notice to End Tenancy for owner's use of the property on April 27, 2016. They observed the home was vacant after they moved out and on June 12, 2016 noted it was listed for sale on MLS. Their tenancy had begun on September 1, 2013, rent was \$3500 a month and a security deposit of \$1750 was paid. The security deposit was returned.

A copy of the MLS listing is in evidence.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The *Residential Tenancy Act* provides:

Tenant's compensation: section 49 notice

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(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.

I find the weight of the evidence is the tenant was served a section 49 Notice to End Tenancy which states vacant possession was required as the landlord or a close family member would occupy the suite. I find the evidence is that the landlord listed it for sale instead. Pursuant to section 51 (2) above, I find the tenant entitled to recover twice the monthly rent.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

| | |
|--------------------------------|---------|
| Monthly rental x2 (\$3500x2) | 7000.00 |
| Filing fee | 100.00 |
| Total Monetary Order to Tenant | 7100.00 |

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: December 07, 2016

Residential Tenancy Branch