



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenants indicate in their Application that they are requesting 2 month's rent in compensation as the landlords gave the notice stating that they would be occupying the rental unit but sold the property within the six months contrary to the 2 Month Notice to End Tenancy for Landlord's Use of Property dated May 5, 2016 (the "2 Month Notice").

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The parties confirmed being served with the documentary evidence from the other party and that they had the opportunity to review that documentary evidence prior to the hearing. Neither party raised any concerns regarding the service of documentary evidence as a result.

Issue to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of double the monthly rent pursuant to section 51(2) of the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 14, 2015 and reverted to a month to month tenancy after February 14, 2016. The landlords served the tenants with the 2 Month Notice dated May 5, 2016 and had an effective vacancy date of July 31, 2016. The tenants vacated the rental unit on July 31, 2016.

The 2 Month Notice indicates the reason as "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)".

The landlord submitted a letter in evidence from a realtor which reads in part:

“...Once the tenants had vacated the property, the Landlords decided to re-list the home...”

[Reproduced as written]

The landlord was asked when the home was listed for sale and the landlord responded by stating that it was within a month or two of the tenants vacating the rental unit. The landlord was then asked when the home sold and the landlord stated he was not sure. The landlord affirmed that it would have been sometime in 2016 when the rental property was sold.

The tenants are seeking compensation for double the monthly \$1,600.00 rent pursuant to section 51(2) of the *Act* as the rental unit was not used for the stated purpose of the 2 Month Notice in accordance with the *Act*.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

Section 51(2) of the *Act* applies and states:

(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.

[My emphasis added]

As the landlord has confirmed that the listing of the house for sale and the eventual sale of the home occurred with 6 months of the effective date of the 2 Month Notice which was July 31, 2016 I find the landlords failed to use the rental unit for the stated purpose for at least 6 months as required by the *Act*. Therefore, I find the landlords issued the 2 Month Notice in bad faith and owe the tenants **\$3,200.00** which is double the \$1,600.00 monthly rent pursuant to section 51(2) of the *Act*.

As the tenants' application was successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

The tenants have established a total monetary claim of **\$3,300.00** as described above. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$3,300.00** accordingly.

Conclusion

The tenants' application is fully successful.

The landlords have failed to comply with the reason stated in the 2 Month Notice for at least six months from the effective date of the 2 Month Notice contrary to the *Act*. The tenants have met the burden of proof and have established a total monetary claim of \$3,300.00. The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$3,300.00. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 27, 2017

Residential Tenancy Branch

