



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began approximately 25 years ago, and monthly rent was set at \$871.00 at the end of the tenancy. The tenancy ended pursuant to a 2 Month Notice issued on August 3, 2016. The tenant filed an application for dispute resolution to cancel the 2 Month Notice, and the 2 Month Notice was upheld by the arbitrator in the decision dated October 12, 2016. The landlord was granted an Order of Possession effective on February 3, 2017, and the tenant moved out on that basis.

The tenant is seeking compensation as he believes the rental unit is not occupied by the landlord's son and nephew as stated in the October 12, 2016 hearing. The tenant submitted that the unit appeared vacant in May and June of 2017, and the landlord had covered the windows after the tenant filed his application for dispute resolution in June of 2017. The tenant submitted in evidence a photo of the window. The tenant testified that the landlord had attempted to offer financial compensation to settle the matter, which the tenant testified was an admission of guilt. No offer was accepted, and the matter remains outstanding.

The landlord testified during the hearing that his son and nephew had moved in on July 15, 2017. He submitted that his 2 Month Notice was valid, as was the reason he provided on the Notice. The landlord maintains that he served the 2 Month Notice in good faith, and his son and nephew had moved in within the timeline required by the Act. The landlord submitted in evidence statements from other tenants confirming that the landlord had performed renovations prior to the move-in, as well as utility bills to support his testimony.

Analysis

Section 51(2) of the Act reads in part as follows:

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.

I have considered the testimony of both parties, and while the tenant questioned the reason the landlord provided on the 2 Month Notice, they did not provide sufficient evidence at this hearing that raises a question about the landlord's honesty. The landlord disputed the tenant's testimony by providing details of the new occupancy, including supporting evidence to demonstrate that the landlord's son and nephew used

the rental unit for the stated purpose within 6 months of February 1, 2017. Accordingly, I am dismissing the tenant's application for monetary compensation.

As the filing fee is a discretionary award given to a successful party after a full hearing on its merits, I dismiss the tenant's application to recover the \$100.00 filing fee.

Conclusion

I dismiss the tenant's application for a monetary order, as well as the tenant's application to recover their filing fee.

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: January 4, 2018

Residential Tenancy Branch