



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FFT

Introduction

On May 13, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* seeking a monetary order for money owed or compensation for damage or loss under the Act, regulations, or a tenancy agreement, and to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed they received the evidence from the other party.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to compensation from the Landlord?

Background and Evidence

The parties testified that the tenancy began on March 1, 2010. The parties testified that rent in the amount of \$2,150.00 was to be paid by the first of each month.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord Use of Property dated May 16, 2017. The reason within the 2 Month Notice is:

- The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Tenant accepted the 2 Month Notice and moved out of the rental unit on August 31, 2017.

The Tenant testified that the Landlord ended the tenancy in bad faith. The Tenant testified that sometime around April or May 2018, he walked past the rental unit and it appeared that the rental unit was empty. The Tenant testified that the Landlord did not use the rental unit for the reason stated on the 2 Month Notice and the Tenant is seeking compensation of double the rent pursuant to section 51 (2) of the Act.

In response, the Landlord testified that the Landlord did use the rental unit for his own use. The Landlord testified that the rental unit was not rented out to a new tenant and has been vacant for over a year. The Landlord submitted that the owner occupied the suite occasionally.

Analysis

Section 51 (2) of the Act provides that 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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord used the rental unit for his own use. There is no evidence to suggest that the Landlord re-rented the unit.

Black's Law dictionary 2nd Edition provides the following definition of "occupy":

"To hold in possession; to hold or keep for use".

I find that the Landlords intention to occupy the unit does not require that the Landlord must live in the rental unit. The Landlord may hold or keep the unit for their own use. The Landlord is not permitted to re-rent the unit for at least 6 months.

I find that the Landlord did not have another purpose or an ulterior motive for ending the tenancy.

There is insufficient evidence from the Tenant to establish that the Notice was issued in bad faith. I am satisfied that the Landlord used the rental unit for the purpose stated in the 2 Month Notice. I find that the Landlord has not breached section 51 (2) of the Act, and is not required to pay the Tenant compensation of double the monthly rent payable under the tenancy agreement. The Tenant's claim for \$4,300.00 is dismissed without leave to reapply.

As the Tenant was not successful in his application, I decline an award to recover the application fee for dispute resolution.

Conclusion

The Tenant has failed to establish that the Landlord has breached the Act, the regulations or the tenancy agreement. The Tenant's application is dismissed.

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 05, 2018

Residential Tenancy Branch