



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

The tenants applied for dispute resolution naming two landlords as the respondents. During the hearing the landlord testified that the two landlords named in the application are actually one and the same. She explained that she has been named twice; first by her married name and then by her maiden name. Accordingly, I have amended the tenants' application to remove the landlord's maiden name as requested by the landlord and tenants during the hearing.

At the outset of the hearing, the parties agreed that the matter of the security deposit has been settled. Specifically, the tenants are in receipt of the security deposit cheque and plan to cash it following the hearing. As this matter has been resolved, I dismiss this portion of the tenants' application without leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2015 on a fixed term until June 30, 2016 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$900.00 was payable on the first of each month.

On June 4, 2018, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") with an effective date of August 3, 2018. The grounds to end the tenancy cited in that 2 Month Notice were;

- 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)

On July 4, 2018 the tenants provided the landlord with written notice to end the tenancy effective July 15, 2018. The tenants vacated the rental unit on July 15, 2018 and on this same date the landlord provided compensation to the tenants pursuant to section 51 of the *Act*.

Tenant RP testified that on August 5, 2018 while at a local laundry mat, she observed a posting advertising the rental unit. The advertisement indicated the unit was available August 1, 2018 at \$1,350.00 per month. The tenant testified that on this same date, she returned home and found an internet advertisement matching that of the laundry mat advertisement. It is the tenants' position that the landlord did not issue the 2 Month Notice in good faith, and therefore seeks compensation equivalent to twelve months rent.

The landlord testified that she served the 2 Month Notice with the intention of having her mother occupy the unit. However after issuing the notice, her mother was diagnosed with vertigo. After talking to her mother's doctor, it was decided that given the severity of her mother's condition it would be best that she did not occupy the unit unsupervised. Unaware of the provisions of the *Act*, the landlord began the process of advertising the rental unit. Upon receipt of the tenants' application, the landlord educated herself and has since removed the advertisements and had her mother move into the rental unit. The landlord testified that her mother moved into the rental unit sometime between mid August to early September 2018.

Analysis

Under section 49 of the *Act*, a landlord may end a tenancy if the rental unit will be occupied by the landlord or the landlord's close family member intends in good faith to occupy the rental unit.

Section 51(2)(b) of the *Act* establishes that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or the rental unit was not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice the landlord must pay the tenant an amount that is equivalent to 12 times the monthly rent..

Because the landlord issued a 2 Month Notice for family use with a corrected effective date of August 31, 2018 the landlord has become obligated to move into the unit or allow a close family member to move into the unit by February 28, 2019. I find the landlord's testimony to be forthcoming and credible. I find it probable that the landlord initially advertised the unit as she was unaware of her obligations under the *Act*. The landlord's testimony has convinced me on the balance of probabilities that she has since complied with the *Act* by having her mother move into the rental unit within the allotted six months. For this reason, I find the tenants are not entitled to compensation in the amount of \$10,800.00.

As the tenants were not successful in their application, I find that they are not entitled to recover the filing fee.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

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 07, 2018

Residential Tenancy Branch