



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation pursuant to a s.49 notice to end tenancy for landlord's use of property and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started on November 01, 2018. The monthly rent was \$1,400.00 due on the first of each month. The rental unit consists of a suite located above the garage. The landlord testified that the garage and the suite above it are attached to the main house on the ground and upper floors respectively. The main house is occupied by the landlord.

On February 27, 2019, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The reason for the notice was that the rental unit was going to be occupied by the landlord or the landlord's close family.

The tenant agreed that she received compensation pursuant to such a notice and was provided with the equivalent of one month's rent.

The tenant testified that the reason for the notice to end tenancy was that landlord's mother was going to move into the rental unit. The tenant stated that she received information from a third party that on July 04, 2019, the suite was unoccupied. The landlord stated that her mother visited her from June 26 to August 07, 2019. The landlord testified that her 15-year-old daughter has now moved into the suite and that the door between the suite and the main house remains open.

Analysis

12 months compensation - \$16,800.00

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement.

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 as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the reason for the notice was that the rental unit was going to be occupied by the landlord or the landlord's close family.

Based on the testimony of the landlord, I find that the landlord's daughter moved into the rental unit and continues to reside there. I accept the landlord's testimony that her daughter is a 15-year-old who chose to move into the larger bedroom in the suite, which is attached to main house and shares a wall with the main house.

The tenant testified that the landlord is using the home for her personal use even though she stated that her mother was going to move in.

Based on the above, I find that the landlord's daughter moved into the rental unit and continues to occupy the rental unit. The purpose for ending the tenancy was that rental unit was going to be occupied by the landlord or the landlord's close family. Accordingly, I find that the landlord accomplished the stated purpose for ending the tenancy under section 49 and therefore I find that the tenant's claim for compensation in the amount of 12 months' rent must be dismissed.

Since the tenant has not proven her case, she is not entitled to the recovery of the filing fee of \$100.00.

Conclusion

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 22, 2019

Residential Tenancy Branch