



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNETC, FF*

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord agreed to having received the tenant's evidence and admitted that he had sent his evidence to the tenant by email, just one hour prior to the hearing. The tenant stated that she did not have sufficient time to read the landlord's evidence. The landlord explained that most of his evidence consisted of text messages between the two of them and was not new to the tenant.

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 March 01, 2021. The rental property consists of a two-level home. The tenant rented the lower level. The upper level was rented separately. The monthly rent was \$1,220.00, payable on the first of each month.

On June 30, 2022, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property with an effective date of August 31, 2022. The reason for the notice was, that the rental unit will be occupied by the landlord. The tenant provided adequate notice and moved out on July 10, 2022.

The tenant stated that on the day that she moved out, she noticed an advertisement on Airbnb for the rental of the unit, she had just moved out of. The photos attached to the advertisement show her belongings inside the suite.

The tenant filed copies of advertisements that show the availability of the unit for August 23 - 30, 2022 and September 10-14, 2022. Included in the tenant's evidence are reviews from people who rented the unit in August and September 2022 as well as the landlord's bio as posted on the Airbnb website.

The landlord stated that he intended to move in on September 01, 2022 and since the tenant moved out prior to the end date of the tenancy as per the notice to end tenant, the landlord decided to rent it out on Airbnb. The landlord stated that he currently lives in the rental unit.

The tenant stated that she resides in the area of the rental unit and when she drives past the house, she notices different cars parked outside, which leads her to believe that the landlord is also currently renting out the unit for short term rentals.

Analysis

Section 49 of the *Residential Tenancy Act* allows a landlord to end a tenancy for landlord's use of property. Section 51 of the *Residential Tenancy Act* sets out compensation requirements for landlords who end a tenancy for landlord's use of property.

Sections 51 and 51.4 of the *Residential Tenancy Act* require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, did not use the rental unit for the stated purpose for at least 6 months duration. The director may only excuse a landlord from having to pay this further compensation if there were extenuating circumstances.

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not accomplish the stated purpose for ending the tenancy within a reasonable period.

In this case, after the tenant vacated the unit in the rental property, the landlord advertised the availability of the unit for short term rentals. The documents filed into evidence by the tenant indicate that the unit was occupied by short term tenants in the months following the end of tenancy.

The landlord testified that that he had extenuating circumstances which included an ailing parent and some financial issues related to the sale of his primary residence.

However, the landlord did not file documents into to evidence to support his testimony of having extenuating circumstances.

When a 2 month notice is given for “landlord use of the premises”, as occurred in this case, section 51(2)(b) of the Residential Tenancy Act provides that in addition to compensation from the landlord that is equivalent of one month’s rent, if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Based on the testimony of both parties and the evidence filed by the tenant, I find that the actions of the landlord which include advertising the availability of the unit starting the day the tenant moved out, indicate that the landlord intended to use the unit for short term rentals

Since the unit was not used for the stated purpose, I find that the landlord must pay the tenant \$14,640.00 which is the equivalent of rent for twelve months. The tenant has proven her case and is entitled to the filing fee of \$100.00.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for \$14,740.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$14,740.00**.

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: June 09, 2023

Residential Tenancy Branch