



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNDC

Introduction

This application was brought by the tenant seeking compensation equivalent to two month's rent under section 51(2) of the *Act*. This section provides for such an award where the landlord has not taken steps toward the purpose stated on a Notice to End Tenancy for landlord use or used the rental unit for the stated reason for at least six months starting within a reasonable period after the effective date of the notice.

Section 49(3) of the *Act* provide that a landlord may give two months' notice for landlord use if the landlord or close family members intends in good faith to occupy the rental unit and section or enters into an agreement in good faith to sell the rental unit..

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy was given in good faith, whether the landlord took steps or used the rental unit for a purpose stated in the notice and whether the tenants are entitled to the compensation sought.

Background and Evidence

This tenancy began April 1, 2004 and ended September 30, 2008. Rent was \$750 per month and there was no security deposit.

There is a fundamental defect in the application as the tenants have not submitted a copy of the Notice to End Tenancy for landlord use and therefore, could not meet the burden of proof required of them.

The applicants make claim that they are entitled to two months rent because, after giving the notice to end so close family members could move in to the rental unit, the landlords sold the property.

The landlords submitted that they had made it very clear to the tenants that they intended to sell the property, had listed it for sale in June, and had consulted with the tenants on arriving at an end of tenancy date. They said the parties came to a mutual agreement on September 30, 2008 as an end date on two months notice.

They said they advised the tenants that it was their goal to sell the house but that family members might occupy it until it sold

The landlords submitted a receipt showing that the tenants had been reimbursed the \$750 for the September rent.

The landlords also submitted a number of receipts in support of their testimony that the rental unit required considerable repairs following the end of the tenancy which took a full month to complete.

The tenants subsequently learned that the property had not been occupied by close family members and brought the present application dated November 19, 2008 but filed on January 7, 2009.

Analysis

As noted, the tenants have failed to provide a copy of the Notice to End Tenancy which is a key element of this claim. In the absence of that document, I venture to make an assessment on credibility.

I accept the evidence of the landlords that they had made it clear to the tenants that it was their intention to sell the property and that they had been considerate enough to consult the tenants on the end of tenancy date.

The tenant claimed that, on the notice to end form, the landlord had checked off the part that stated the landlord needed the unit for themselves or a close family member instead of the section that indicated they wished to sell the property. If that was the case, it is highly unlikely that there is any intention to deceive as the result for the tenants in the end was the same as they still received the last month's rent free and the landlords did indeed sell the property as was their stated intention.

In addition, I accept the evidence of the landlords that the tenants had been repeatedly late paying rent, the subject of neighbour complaints regarding domestic disputes accumulated garbage and damage to the rental unit. From this I deduce that the landlords could have given Notice to End for cause, but chose the much more generous route of Notice for Landlord use.

Conclusion

In the absence of the Notice to End Tenancy, I find that the tenants have failed to prove that the landlords failed to take steps or failed to use the rental property for the reasons stated in the Notice to End Tenancy. I further find, on the balance of probabilities, that there was a mutual agreement to end the tenancy as stated by the landlords.

Therefore, the application is dismissed without leave to reapply.

February 27, 2009.

Dispute Resolution Officer