



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application from the tenants for a monetary order for compensation in association with the landlord's issuance of a 2 month notice to end tenancy, and recovery of the filing fee for this application. One of the tenants and the agent for the landlords participated in the hearing and gave affirmed testimony.

Issue to be Decided

- Whether the tenants are entitled to a monetary order under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of this tenancy was from November 1, 2007 to November 1, 2008. The tenancy agreement shows a tick in box "D" as follows:

D. At the end of this time the tenancy is ended and the tenant must move.

IF YOU CHOOSE "D" BOTH THE LANDLORD AND TENANT MUST INITIAL
HERE

While the tenancy agreement shows the signature of the landlord at box "D," no signature or initials appear for the tenant. Therefore, I must conclude that had tenancy continued beyond the fixed term, it would have become a month-to-month tenancy.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated August 4, 2008. The date shown on the notice by when the tenants must vacate the unit is October 31, 2008. The reason shown on the notice for its issuance is:

The rental unit will be occupied by the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Following receipt of the 2 month notice, the tenant gave the landlord notice of his intent to vacate the unit before October 31, 2008. Subsequently, the tenant vacated the unit on September 15, 2008. On page 2 of the 2 month notice, under the heading COMPENSATION FOR TENANTS, it is stated in part as follows:

- If this is a periodic tenancy, a tenant who receives this Notice can give 10-days notice and move out early. The landlord must still pay the tenant one-month's rent as compensation.

The tenants allege that after they vacated the unit, the landlord did not in fact use the property as indicated on the 2 month notice. Instead, the tenants allege the landlord re-rented the unit to others. Accordingly, the tenants claim entitlement to compensation in the amount of two months rent as provided for in section 51(2) of the Act.

Analysis

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**. In particular, section 51(1) of the Act provides as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

From the testimony of the parties, I take it there is no disagreement that the tenant did indeed receive the equivalent of one month's free rent in association with the landlord's issuance of the 2 month notice. Specifically, the landlord collected no rent from the

tenant for the period of September 1 – 15, 2008 while the tenant still resided in the unit. Further, when the tenant vacated the unit in mid September 2008 the landlord issued him a cheque for one half month's rent in the amount of \$425.00.

The main thrust of the tenant's dispute appears to be an allegation that the landlord did not use the premises for the stated purpose following the end of tenancy in September 2008. In this regard, section 51(2) of the *Act* provides, in part, as follows:

51(2) 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, 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.

In this regard the landlord's agent testified that the landlord moved into the unit in late 2008 and still resides there. Further, the landlord's agent stated that the landlord also has two room mates living with him in what is a three-bedroom unit. Evidence in support of this assertion took the form of a copy of a letter from each of the two individuals who claimed that they moved into the unit and are room mates of the landlord. One individual claims he moved into the unit in November 2008, while the other claims to have moved into the unit in December 2008. Additionally, the landlord's evidence included a copy of a BC Hydro invoice with a billing date of January 15, 2009, showing the account in the landlord's name at the subject address.

In dispute of the landlord's position that he currently resides in the unit, the tenant submitted into evidence a written confirmation from himself that he had spoken to one of

the two room mates who confirmed that he had moved into the unit in December 2008. Additionally, the tenant submitted two photocopied photos showing a FOR RENT sign posted outside of the unit.

The burden of proof is on the party making the claim. When one party seeks to provide evidence to support facts in one way, and the other party attempts to provide equally probable evidence to support facts another way, the party making the claim has not met the burden of proof on a balance of probabilities and the claim fails.

After considering all of the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have not met the burden of proof in making their claim. I am persuaded that the landlord did move into the unit following the end of the tenancy and continues presently to reside there. Finally, no evidence has been presented to support a proposition that the landlord does not intend to continue to reside in the unit for a reasonable period of time.

Conclusion

Pursuant to all of the above information, I hereby dismiss the application from the tenants for a monetary order for compensation for rent and recovery of the filing fee.

DATE: March 26, 2009

Dispute Resolution Officer