



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an application by the tenants for monetary compensation under the Act. One of the two tenants, both landlords, an advocate for the landlord and a witness for the landlord all participated in the teleconference hearing.

Issues(s) to be Decided

Are the tenants entitled to the monetary amounts claimed?

Background and Evidence

Neither the tenants nor the landlord provided a copy of the tenancy agreement as evidence for the hearing. The tenant's testimony was that the tenancy was for a fixed term ending June 30, 2009, which would then revert to a month to month tenancy. The testimony of the landlord was that the tenancy was not to revert to a month to month tenancy, but that the tenancy would end and the tenants would move out at the end of the fixed term. As I had only disputed testimony on this point I could not make a determination whether the tenancy was to revert to month to month or not.

The monthly rent for the unit was \$3700. The evidence of the tenants was that on May 15, 2009 the landlord served the tenants with a two month notice to end tenancy for landlord's use. The notice stated that the reason for ending the tenancy was that the rental unit would be occupied by the landlord or a close family member. The tenants moved out on July 26, 2009. The tenants' evidence was that 10 days after they vacated

the unit, the landlord listed the condo for sale. The tenant attended the unit in the guise of a potential buyer and noted that the unit appeared to be “showcased” for sale, and was not in fact occupied by anyone, as there were no clothes in the closets, no food in the fridge and no other signs of occupancy. The tenants have therefore claimed compensation equivalent to two months’ rent, totalling \$7400, on the basis that the landlord did not use the rental unit for the purpose stated in the notice to end tenancy.

The tenants have also claimed further monetary compensation as a result of their move. Because they were forced to move on such short notice, they incurred moving costs of \$5,421.35; they have also claimed \$5000 for pain and suffering for the stress and strain of the move and being forced to move into non air conditioned accommodations during a heat wave, as well as a \$2500 compensation fee they had to pay to their tenant in order to move back into a condo they owned.

The response of the landlord was as follows. In May 2009 the tenants offered to buy the condo at an extremely low price. The landlord refused the offer. The tenants then insisted that the landlord serve the tenants with a two month notice to end tenancy for landlord’s use. The tenants told the landlord that they had already found a new place to live, and that they just wanted one month’s free rent. The landlord did not fully understand their responsibilities under the *Residential Tenancy Act*, but they did as the tenants insisted and served the tenants with a two month notice to end tenancy for landlord’s use. The landlord’s daughter did move into the unit, on August 1 or 2, 2009. The unit was listed for sale on August 12, 2009, and sold on September 14, 2009. The landlord’s daughter moved out of the unit on October 6, 2009, and the new owners took possession of the unit on October 9, 2009. The reason that the unit did not look occupied when the tenant viewed it was because they purposely showcased the unit for sale before every viewing, and the landlord lived in the same building only two floors up, so their daughter would go to the landlord’s condo to eat her meals.

Analysis

The landlord implied that they should not be responsible for the consequences of serving the tenants with a notice to end tenancy for landlord's use because they served the notice by mistake and only at the tenants' insistence. All persons who choose to carry out the business of being landlords are subject to the legislative requirements set out under the *Residential Tenancy Act*. It is the landlord's responsibility to understand their responsibilities under the Act. In this case, the landlord served the tenants with a notice to end tenancy for landlord's use, and stated on the notice that the reason for ending the tenancy was that the landlord or a close family member intended to occupy the unit. The landlord is responsible for the consequences of serving that notice.

Under section 51 of the Act, if a tenant receives a notice to end tenancy for landlord's use and then the rental unit is not used for the purpose stated on the notice for at least six months, the landlord must pay the tenant compensation equivalent to double the monthly rent. In this case, even if the landlord's daughter did move into the rental unit she did not occupy it for at least six months. The tenants are therefore entitled to the compensation claimed of \$7400.

In regard to the remainder of the tenants' application, I find as follows. In a month to month tenancy, it is open to the landlord to serve tenants with a two month notice to end tenancy for landlord's use. If the tenants accept the notice they must vacate the unit by the effective date of the notice, at their own cost. If the tenants question the validity of the notice to end tenancy for landlord's use, it is open to them to apply to dispute the notice. In this case, the tenants chose to act on the notice and vacate the rental unit. The tenants are therefore not entitled to any of the further compensation they have claimed, and I dismiss that portion of their application.

Conclusion

The tenants are entitled to \$7400, as well as recovery of their \$100 filing fee for the cost of their application. I grant the tenants an order under section 67 for the balance due of \$7500. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 4, 2010.

Dispute Resolution Officer