



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC. FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution for a monetary order for compensation or money owed.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary Order for compensation under the Act and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted the following documents into evidence:

- A copy of a Notice of Rent Increase dated March 24, 2009 showing a rent increase effective July 1, 2009 for rent to go from \$2,500.00 to \$2,593.00;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 24, 2009 with an effective vacancy dated of June 30, 2009, citing the rental unit will be occupied the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- A copy of a letter from the tenants dated September 8, 2009 addressed to the landlord but with an incorrect address proposing some options for settling the dispute;
- A copy of the landlord's response to the tenants' letter declining to settle the dispute; and
- A copy of a real estate posting from the internet showing the property listed on July 14, 2009.

The landlord submitted into evidence the following documents:

- A list of witnesses available to participate in this hearing;
- Email correspondence between the landlord and her property managers;
- A copy of a Notice of Rent Increase dated March 24, 2009 showing a rent increase effective July 1, 2009 for rent to go from \$2,500.00 to \$2,593.00;

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 24, 2009 with an effective vacancy dated of June 30, 2009, citing the rental unit will be occupied the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- A copy of the tenants 10 Day Notice to End Tenancy dated May 20, 2009 to end the tenancy early after receiving a 2 Month Notice to End Tenancy;
- A copy of a letter from the tenants dated September 8, 2009 addressed to the landlord but with an incorrect address proposing some options for settling the dispute;
- A copy of the landlord's response to the tenants' letter declining to settle the dispute;
- A letter from the landlord's realtor dated December 20, 2009 confirming the landlord's intent regarding the property;
- E mail correspondence from the purchaser of the landlord's property (rental unit) dated between December 28, 2009 and December 30, 2009 regarding the sale of the property;
- A letter from the landlord's property manager dated December 22, 2009 outlining the landlord's intent for the property;
- Several documents showing the landlord had changed her address to the rental unit for several agencies including driver's license, care card, banking institutions.

The male tenant testified that they had entered into a tenancy agreement with the landlord beginning in 2005 and had continued there until the 2 Month Notice to End Tenancy was issued in 2009.

The tenant confirms they received the 2 Month Notice to End Tenancy on March 25, 2009, although the Notice was dated March 24, 2009. He further testified that they obtained alternate accommodation and provided the landlord with 10 days notice as allowed under Section 50 of the *Act*.

The tenant's uncorroborated testimony is that the landlord never did move into the rental unit but merely put the property up for sale immediately and subsequently sold the property, which is not in line with the notice to end tenancy that they received.

The landlord's testimony is that her intention all along was to return to Canada to retire in this rental unit and that she had made all of the arrangements by selling her home outside of Canada several months prior to moving to Canada.

The landlord states that she did, in fact, move into the rental unit but quickly determined that it was not of sufficient size to meet her needs and that when she had bought the property her son lived closer to this address but had since moved to another community further away.

Once she determined this, her testimony is that she had her realtor show her a property closer to her son that she ultimately purchased and sold the rental property. She confirmed that she sold the property, effective September 8, 2009.

Analysis

Section 49 of the *Act* allows the landlord to end a tenancy for landlord's personal use, including for the landlord to move into the property. The section stipulates that the landlord may issue a notice under this section if their intent, in good faith, is to occupy the rental unit.

Had the tenant disputed the notice to end the tenancy, the landlord's intent would have been relevant to determination of that dispute. However, once the end of the tenancy was accepted by the parties, Section 51 of the *Act* requires the landlord to use the rental property for the stated purpose for at least 6 months.

In this case, the landlord failed to occupy the rental unit for 6 months from the effective date of the end of the tenancy. In fact, the landlord sold the property within 2 ½ months of the end of the tenancy. As such, I find the landlord did not comply with Section 51 (2)(b) and the tenant is therefore entitled to the equivalent of double the monthly rent.

Conclusion

Based on the above, I find that the tenant is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$5,050.00** comprised of \$5,000.00 compensation owed and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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 26, 2010.

Dispute Resolution Officer