

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application filed by the tenants seeking:

1. A monetary order for compensation for damage or loss in the sum of \$8,527.86; and
2. Recovery of the filing fee paid for this application.

Background Summary

The tenants testified that they began renting the subject property in October 2000. In August 2008 the tenants were served with a 2 month Notice to End Tenancy stating that the landlord wished to end the tenancy because:

A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenants say they later discovered that the reason given on the Notice for ending the tenancy was not the case. The tenants say that that the rental unit was simply rented out once again by the new owners.

The respondents, named as landlords in this application, agree that they rented the property out once they became the owners.

Analysis

The evidence is that this tenancy began in October 2000. Sometime in 2008 the landlords listed the rental property for sale. On August 29, 2008 the landlord, ELT,

issued a 2 month Notice to End Tenancy for Landlord's Use of Property with an effective ending date of November 30, 2008.

While the tenants have made claim against one of their landlords, ELT as well as the people who intended to purchase the rental unit, DS and TS, there has been insufficient evidence to show that DS and/or TS requested that the either DS or TS asked ELT to issue any notice to the tenants.

At Section 49(5) the *Residential Tenancy Act* states that a landlord may issue a Notice to End Tenancy when:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenant argued that he could not prove that the purchaser (DS and TS) asked the landlord, ELT, in writing, to issue the Notice to End the tenancy because the purchaser and landlord were unwilling to provide the tenant with copy of the Contract of Purchase and Sale. The tenant asked that I take an adverse view of this refusal.

The landlord's legal counsel submitted that a copy of the contract was not provided to the tenants because it contains personal information. In any event, counsel for the landlords confirmed that the contract contained no provision that the landlords were required to give the tenants notice. On this point, I am prepared to accept the landlord's

counsel's submission as the truth. I therefore decline to take an adverse view of the lack of the provision of the Contract of Purchase and Sale to the tenants. I accept that landlords have a bona fide reason for not wishing to release a contract that contains the personal information of the parties involved. However, and more to the point, the Notice to End Tenancy is not issued under Section 49(5)(ii) set out above. It is issued under 49(4):

A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Therefore it would be unnecessary to show that the purchasers instructed the former landlords (vendors) to give the tenants notice to vacate.

With respect to the reason given on the Notice for its issuance, there has been insufficient evidence to show that the landlords were "a family corporation". Presumably, the tenants were aware that their landlords of nearly 8 years were not a family corporation. However, if they were not aware, the tenants may have at least questioned receiving a Notice to End Tenancy citing that claim or they may have questioned receiving a Notice showing one ground for ending the tenancy and correspondence citing a completely different ground for ending the tenancy. In this I refer to the letter the landlord's wrote to the tenants on August 28, 2008 in which the landlords say they are ending the tenancy because:

The sale and possession date is November 30, 2008. Within sales agreement the new owners have requested vacant possession on this date.

(reproduced as written)

If this were the case, the landlords should have issued a 2 month Notice to End Tenancy on the ground that:

All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the

purchaser or a close family member intends in good faith to occupy the rental unit.

But they did not. They issued it on the ground that:

A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.

Under Section 49(8) tenants have 15 days to dispute a Notice to End Tenancy. Had the Notice been disputed by the tenants within the appropriate time frame, then the landlords would have had to meet the burden of proving that they were a family corporation holding ownership of the rental unit and prove that it would be occupied by an individual who owns or a close family member who owns all of the voting shares in that family corporation. If the landlords could not prove this, it is likely the Notice would have been set aside and the tenancy would have continued. However, the tenants did not dispute the Notice. While the tenants say they did not dispute the Notice because they did not become aware of the DS and TS true intentions with respect to the property until after they had vacated it, this is not the issue. The intentions of DS and TS had nothing to do with the matter because the notice was not issued on the ground that the purchasers or a close family member intended to occupy the rental unit.

Under Section 49(9), a tenant who receives such a notice who does not make an application for dispute resolution in accordance with subsection (8) has conclusively presumed to have accepted that the tenancy ends on the effective date set out on the notice and the tenant must vacate the rental unit by that date. This is what occurred in this case, the tenants did not dispute the notice and they accepted the end of the tenancy.

When considering compensation that might be payable to tenants when a tenancy ends under these circumstances, I must refer to the Act Section 51(1). Here the Act states that when a landlord issues a 2 month Notice the tenants are to receive the equivalent of one month's free rent. Prior to the implementation of Section 51(1) tenants were forced to make application to recover moving expenses in these circumstances. There

have been no submissions that the tenants did not receive this compensation so I will presume it was provided. Therefore, not only did the tenants accept that the tenancy was ending by not disputing the notice, they accepted the one month's free rent designed to compensate them for their moving expenses.

In addition to the one-month's rent compensation Section 51(1) there are provisions for compensation to be paid in cases where landlords do not accomplish that for which they issued the Notice to End Tenancy. As stated above, prior to the changes to the *Residential Tenancy Act* in 2004, there were no specific provisions and tenants had to make a claim for moving and other expenses. When the Act changed in 2004 Section 51(2) was enacted setting a specific amount of compensation that must be paid by the landlords to the tenants in these cases. While that Section does not say further compensation cannot be sought and awarded, clearly, the legislators had already anticipated the need to compensate tenants when their tenancies ended in these circumstances and they set a limit to that compensation; that is the equivalent of two month's rent.

In the end, the tenants bear the burden of proving their claims. In order to prove their claims the tenants must show that the property was not used for the purpose indicated on the Notice. I am satisfied that this is the case and, as the Act states the tenants are entitled to compensation, and that compensation is the equivalent of two month's rent. I will not allow the tenants claims over and above this sum because the Act is specific as to the compensation to be paid in these circumstances.

With respect to who must pay the compensation to the tenants I find that all of the respondents named in this application are not responsible. The evidence shows that DS and TS did not issue or instruct ELT to issue the Notice to End Tenancy in question. Clearly ELT issued the Notice to End Tenancy and therefore she must be held responsible for accomplishing the purpose for which she issued the Notice. As the evidence shows that the landlord ELT did not accomplish that for which she issued the Notice to End Tenancy, I find that she is responsible for compensating the tenants the equivalent of two months' rent.

Because they have been somewhat successful in their application, I will order that the landlord ELT pay the tenants fee for making this application in the sum of \$100.00.

Conclusion

The tenants are provided with a Order in the sum of \$4,000.00 payable by ELT. The landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.