

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and an order for the return of their security deposit. Both parties participated in the conference call hearing.

At the hearing the parties agreed that the security deposit had been returned to the tenants. As the deposit issue has been resolved I consider that claim to have been withdrawn.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed on the following facts. The tenancy began in February 1, 2009 under a different landlord and was set to run for a fixed term expiring on January 31, 2010 at which time it would become a month to month tenancy. Rent was set at \$1,500.00 per month. The landlords acquired the property in September 2009 and on or about September 24 served the tenants with a notice to end tenancy. The notice stated that the landlords and their family intended to occupy the rental unit and had an effective date of January 31, 2010. The landlords told the tenants that if they were able to locate accommodation earlier than January 31, they would permit them to give 30 days notice effective on a date earlier than January 31. The tenants vacated the unit on the effective date of the notice and received the equivalent of one month's rent in compensation. Since the tenants vacated the property, the landlords have torn down the rental unit and are constructing a home which they expect to be completed in the fall of 2010.

The tenants testified that they incurred significant inconvenience and expense as a result of the ending of their tenancy and took the position that the landlord had not used the rental unit for the purpose stated in the notice to end tenancy.

The landlords testified that they purchased the property with the intent of residing at that location. They immediately gave the tenants notice so as to give them as much time as possible to find accommodation and they investigated the cost of renovating the rental unit. They determined that it would be more cost-effective to demolish and have proceeded with building a new home.

Analysis

The tenants made a claim for expenses related to their move as well as compensation under section 51 of the Act. Prior to 2004, the Act was silent as to compensation for tenants whose tenancies ended as a result of a landlord wishing to use the property for his own purposes. As a result, tenants would apply for dispute resolution to obtain compensation as their tenancies had ended through no fault of their own and they had had to incur unexpected expense to move. In 2004 the Act was substantially revised and amongst the revisions was section 51 of the Act which 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.
- 51(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.
- 51(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that section, the landlord must refund that amount.
- 51(2) In addition to the amount payable under subsection (1), if
- 51(2)(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

51(2)(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.

It is clear to me that in implementing a compensation scheme, the legislature intended that tenants be compensated a set amount in these circumstances and be limited to that amount. For that reason I find that the tenants have been fully compensated and I dismiss their claims for moving costs, additional rent paid in their new home and their bus pass.

The landlords ended the tenancy pursuant to section 49(3) of the Act on the basis that they intended to occupy the unit. I am satisfied that the landlords intend to build a home on the residential property which they intend to occupy. Although it would have been more appropriate for them to have given notice that they intended to demolish the rental unit, I find that the fact that the landlords intend to build a home on the site in which they intend to reside is within the scope of section 49(3). The tenants brought their application less than two weeks after having vacated the rental unit and under section 51(2)(a) the landlords are not obligated to immediately begin using the rental unit for the purpose stated in the notice, but must begin within a *reasonable period*. I find that the tenants brought their application before giving the landlords a reasonable period in which to achieve the intended purpose as stated in the notice to end tenancy and I find that occupation within a year of the effective date of the notice is reasonable under the circumstances. For these reasons the tenants' application is dismissed.

I note that there was some discussion during the hearing as to whether the notice to end tenancy was given legally. The tenants were in a fixed term tenancy agreement which was set to expire on January 31, 2010. The landlords were free to give a notice to end tenancy at any time during the tenancy, but the effective date could not have been earlier than January 31 as the landlords were contractually obligated to honour the fixed term. The landlords complied with the Act in this respect. The tenants argued that the landlords should have permitted them to give as little as 10 days notice if the tenants were able to find alternative accommodation. Had the tenancy been a month

to month tenancy and the landlords had served a two-month notice, the tenants would have been entitled to give the landlords 10 days notice to end the tenancy earlier than the effective date on the notice pursuant to section 50 of the Act. However, the fixed term did not end until January 31 and the landlords were therefore under no obligation to permit the tenants to end the tenancy earlier than the effective date of the landlords notice. The landlords therefore complied with the Act in this respect as well.

Conclusion

The tenants' application is dismissed in its entirety.

Dated: June 02, 2010
