

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on September 18, 2008 and ended on February 1, 2010 when the Tenants moved out. Rent was \$1,700.00 per month. On December 1, 2009 the Landlord served the Tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The ground stated on the notice is that "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse."

The Tenants said that after they moved out they discovered that the Landlord's brother-in-law moved into the rental unit. The Tenants argued that this person was not a close family member as defined under the Act. The Tenants denied that the Landlord or his spouse have resided in the rental unit or intend to reside in the rental unit. The Tenants suggested that the Landlords instead intend to sell the rental unit. The Tenants said they believe this because the rental unit is a four bedroom house with 3 bathrooms and is therefore too large to meet the needs of the Landlords. The Tenants also claimed that the Landlords offered to sell the rental property to them but changed their minds. The Tenants admitted that they could not get approved for financing at the time.

The Landlords admit that they reside and work in another community. The Landlords also admitted that the brother of one of them moved into the rental unit on February 1, 2010 for insurance purposes. One of the Landlords claimed that she resides in the rental unit approximately 10 days per month to assist her mother. This Landlord further claimed that as of July 1, 2010 she will be quitting her current job and residing permanently in the former rental unit with her brother renting part of the property. The Landlords admitted that in September 2009 they offered to sell the rental property to the Tenants on a "rent to buy" basis but that after approximately 3 months the Tenants did not follow up on it so they believed the Tenants decided not to pursue their offer.

Analysis

Section 51(2) of the Act states that

“if steps have not been taken to accomplish the stated purpose for ending the tenancy under s. 49 within a reasonable period after the effective date of the notice, or 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) must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.”

In this case, the Tenants argue that the Landlords have not resided in the rental unit but rather the brother of one of them has resided there and he is not a close family member as defined by the Act. Section 49 of the Act defines a close family member as an “individual’s father, mother, spouse or child or the father, mother or child of that individual’s spouse.”

The Landlords admit that the brother of one of them has been residing in the rental unit since February 1, 2010 but claim that one of them has also been residing in the rental unit for approximately 10 to 14 days per month commencing March 1, 2010 and will be residing there full time commencing July 1, 2010.

I find that the brother of one of the Landlords is not a close family member as defined by s. 49 of the Act. Consequently, the issue to be resolved is whether either of the Landlords has occupied the rental unit within a reasonable time after February 1, 2010 (the effective date of the 2 Month Notice) and have occupied it for at least 6 months.

On this issue, the Tenants have the burden of proof and must show (on a balance of probabilities) that the Landlords have not occupied the rental unit within a reasonable period following February 1, 2010 or have not occupied it for a period of 6 months. This means that if the Tenants’ evidence is contradicted by the Landlords, the Tenants will need to provide additional, corroborating evidence to satisfy the burden of proof. The Tenants said they base their belief that the Landlords have not occupied the rental unit on information they have received from their former neighbors, none of whom gave evidence at the hearing. I find that the hearsay evidence of the Tenants’ former neighbors is unreliable and I give it little weight.

Given the contradictory evidence of the Landlords and in the absence of any reliable corroborating evidence from the Tenants, I find that the Tenants have not provided sufficient evidence to show that one of the Landlords has not occupied the rental unit for 10 – 14 days per month since March 1, 2010 as she claimed. I further find that a one month period following the effective date of the Notice is a reasonable period of time to use the rental unit for the purpose stated. Furthermore, there is nothing in the Act that says that the Landlords must use the rental unit as their primary residence but rather it only requires that the Landlords must “occupy” the rental unit.

Consequently, I find that the Tenants have not shown that the Landlords have not used the rental unit for the purpose stated on the 2 Month Notice. However, I also find that the Tenants' application in this matter is premature because the 2nd part of the requirement under s. 51 of the Act is that the rental unit must be occupied by the Landlord for a period of at least 6 months. Given the Landlords' evidence that one of them only began occupying the rental unit in March 2010 (and I find on a balance of probabilities that this was the case), ***the Tenants would only be entitled to compensation if they could show that the Landlords did not occupy the rental unit for a further 3 months.*** As a result, the Tenants' application for compensation is dismissed with leave to reapply in the event that the rental property is not used for the purpose stated on the 2 Month Notice to End Tenancy for at least 6 months.

As the Tenants have not been successful on this application, I find that they are not entitled to recover the filing fee for this proceeding from the Landlords and that part of their application is dismissed without leave to reapply.

Conclusion

The Tenants' application for compensation is dismissed with leave to reapply. The Tenants' application to recover the filing fee for this proceeding is dismissed without leave to reapply.

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: June 07, 2010.

Dispute Resolution Officer