



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 an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act for the equivalent of two months rent under section 51(2) when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued and the landlord failed to utilize the unit for the purpose stated in the Notice. Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the landlord, after ending the tenancy for landlord's use, then failed to utilize the rental unit for the purpose stated in the Notice with the Act including: a) proof it took steps accomplish the stated purpose given for ending the tenancy within a reasonable period after the effective date of the notice and; b) proof that it used of the property for the stated purpose for a period of at least 6 months

Background and Evidence

Both parties acknowledged that the Two-Month Notice was issued to terminate the tenancy for the purpose of allowing the landlord to move into the rental unit and the tenant complied by vacating on March 1, 2010.

The tenant testified that sometime in June 2010 the tenants discovered that the subject residence was listed for sale and concluded that the landlord was therefore not utilizing

the rental premises for the purpose stated on the Two-Month Notice. A copy of the notice was submitted into evidence and indicated that the tenancy was being terminated because: *“the rental unit will be occupied by the landlord or the landlord’s spouse or close family member (father, mother, or child) of the landlord or the landlord’s spouse.”*

The tenant’s position was that the fact that the premises were put up for sale prior to the 6-month period specified in section 51 of the Act, and based on his research of the property, it was evident that the landlord was not genuinely residing in the unit which was the purpose stated in the Two-Month Notice. The tenant stated that the landlord was therefore obligated under the Act to compensate the tenant the equivalent of two-months rent in the amount of \$1,500.00.

The landlord testified that it was the landlord’s intention was that the rental unit would be occupied by the landlord and in fact it was occupied by the landlord from March 2010 to the present time, as stated on the Notice. The landlord pointed out that the duration of the landlord’s occupancy had already exceeded 6 months as of the date of this hearing. The landlord acknowledged that a decision was made to list the property for sale in June 2010 for compelling personal reasons. However, if any offer came in, the closing date would have been specified to be effective only after the 6-month period had expired. The landlord testified that the unit is no longer listed for sale as the listing had been removed in September 2010 and the landlord is still presently continuing to use the rental unit as a “family getaway” as they have all along. The landlord testified that there were ferry receipts that would verify the frequency and duration of their visits to the stay at the subject property. These were not submitted into evidence. The landlord’s position was that, although the unit was listed for sale, this was not the motive for ending the tenancy.

In support of the above, verbal testimony from one witness was heard and the landlord had also submitted written testimony from family members and a friend who is a real estate salesperson from Ontario attesting to the above. No other documentary evidence was submitted by the landlord.

Analysis:

Section 49(3) of the Act provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. All agreed that this was the stated purpose given for ending the tenancy. Section 51(2) of the Act states that in addition to the one month payable under section 51(1), the landlord must also pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if 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 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.

It was firmly established, based on the evidence and testimony of both parties, that the landlord did list the subject property for sale within 3 months of the termination of the tenancy. I find that this fact in itself is *not* proof that the landlord failed to occupy the rental unit, as given for the reason for ending the tenancy. That being said, because the landlord then chose to put the property up for sale, this raised a logical and understandable doubt about whether or not the landlord was actually utilizing the rental unit for the purpose stated in the notice. I find that only the landlord was in a position to provide the proof to resolve this doubt during the proceedings.

I find that legally ending a tenancy so that the landlord could sell a rental unit would necessitate a Two-Month Notice under section 49(5)(a) of the Act and would require strict compliance with sections 49(5)(b) and 49(5)(c) before the tenancy could be ended as well. However, I make no finding that the landlord in this instance took steps to end the tenancy because the property was going to be sold.

In this instance I find that the landlord's stated intent was to *occupy the unit* and the tenant accepted the termination of the tenancy on this basis. In fact, the landlord and witnesses did give significant verbal testimony and went so far to submit written testimony that the landlord fully complied with section 51(2)(a) by commuting to the location and residing in the unit on a frequent basis from the time the tenancy ended to

the present day. However, I find that although the landlord stated that it possessed documentary evidence to verify the frequent occupancy, none of the ferry receipts referred to by the landlord as proof were ever submitted into evidence to support this and the tenant disputed the landlord's claimed occupancy of the rental unit.

The landlord also emphasized that, although the rental unit was listed for sale prior to the expiration of the 6-month required occupancy period, the real estate listing contained a specific proviso that the closing date must be beyond the 6-month period required pursuant to the section 49(3) notice. But the landlord's testimony on this subject was challenged by the tenant and the key documents that were in the landlord's possession to prove otherwise were never submitted into evidence.

Given the above, I find that the landlord has not succeeded in adequately proving on a balance of probabilities that, although the property was for sale, the rental unit was genuinely occupied by the landlord for at least 6 months beginning within a reasonable period after the effective date of the notice. I therefore find that under section 51(2) the tenant is entitled to receive \$1,550.00 comprised of double the monthly rent of \$750.00 and the \$50.00 fee for filing the application.

Conclusion

Based on the testimony and evidence, I hereby grant the tenant a monetary order in the amount of \$1,550.00 against the landlord. This Order must be served on the landlord in person or by registered mail 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: November 2010.

Dispute Resolution Officer