



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 tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for ending the tenancy for landlord's use 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 tenancy began in July 2006 as a month to month tenancy for a monthly rent, at the end of the tenancy, of \$650.00 due on the 1st of the month. A security deposit of \$300.00 was paid in July 2006. The tenancy ended when the tenant vacated the rental unit on May 3, 2010.

The tenant testified the landlord issued her a handwritten note that provided a 2 month notice to end the tenancy on April 30, 2010 because the landlord wanted to sell the rental unit. The landlord testified that the tenant had been made aware the year previous of the landlord's intention to sell the rental unit.

Both parties agreed that the landlord had offered the tenant the opportunity to purchase the rental unit and that they had periodic conversations regarding the tenant's ability to purchase the unit.

The landlord testified that in January 2010 she was informed that her insurance company required a thorough inspection of the rental unit. When the landlord had the unit inspected she found that the rental unit required major repairs and at that time the landlord wrote out the note giving the tenant notice to vacate.

Analysis

Section 51 of the *Act* states that a tenant who receives a notice to end a tenancy under Section 49 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.

Section 49 of the Act allows a landlord to end a tenancy for any of the following reasons:

- The landlord enters into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser has asked the landlord in writing to give notice to end the tenancy; or
- The landlord has all the necessary permits and approvals required by law and intends, in good faith, to do any of the following:
 - Demolish the rental unit;
 - Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - Convert the residential property to strata lots;
 - Convert the residential property into a not for profit housing cooperative;
 - Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property; or
 - Convert the rental unit to a non-residential use.

Section 49 goes on to say that a notice given under this section must comply with Section 52 that states in order to be effective a notice must be in writing and must:

- a) Be signed and dated by the landlord giving the notice;
- b) Give the address of the rental unit;
- c) State the effective date of the notice;
- d) State the grounds for ending the tenancy; and
- e) When given by a landlord, be in the approved form (as provided on the Residential Tenancy Branch website or offices).

As the reason provided to the tenant was that the landlord *wanted to sell* the rental unit and as the notice was not in the approved form, I find the landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use in accordance with Section 49.

While I accept that the tenant agreed to and then relied upon that notice to vacate the rental unit and the landlord's efforts over the course of the last year of the tenancy to hold off selling the rental unit until the tenant had an opportunity to purchase it I find that the agreement of the tenant to vacate constitutes a mutual agreement to end the tenancy rather than a Section 49 end of tenancy.

Conclusion

For the above noted reasons, I dismiss the tenant's application in its entirety.

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 18, 2010.

Dispute Resolution Officer