



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 to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, sent via registered mail on July 8, 2010. The Landlord confirmed receipt of the hearing documents and evidence submitted by the Tenant.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Have steps been taken to accomplish the stated purpose for ending the tenancy within a reasonable time?
2. Has the rental unit been used for the stated purpose for a reasonable period after the effective date of the Notice?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective May 1, 2009 and was set to switch to a month to month tenancy after April 30, 2010. Rent was payable on the first of each month in the amount of \$1,750.00 and the Tenant paid a security deposit of \$875.00 on April 1, 2009.

The Tenant testified the Landlord had tried to sell the rental house for some time and that he was not happy that he was required to follow the rules of the *Residential Tenancy Act*. After many requests she finally received a notice to end the tenancy on the proper form. She stated that she found the 2 Month Notice to End Tenancy under a table in her porch on April 1, 2010 and that it was accompanied by a letter from the purchaser dated March 31, 2010 which stated that he requested the Landlord give the Tenant notice to end tenancy as he was intending on occupying the rental house upon completion of the sale. She stated that she vacated the rental property on approximately April 6, 2010 and that the Landlord provided her the balance of the month's rent as the compensation for issuing the Notice in the prorated amount of \$1,400.00. The Landlord also paid her \$1,375.00 for what she believes was a refund for her cost to paint the entire house of \$500.00 and \$875.00 for the return of her security deposit. She is seeking a monetary order of \$3,500.00; an amount equal to two month's rent because "all the conditions of the sale were not met" so the house was not sold at the time the Notice to End Tenancy was issued. She states she saw a for sale sign in front of the property in June 2010 and that she found the listing on line and printed it on June 3, 2010.

The Landlord testified and confirmed that there was one condition remaining on the offer to purchase at the time he issued the Notice to End Tenancy to the Tenant. The condition was that the sale was subject to the purchaser selling his mother's house. When that condition remained in effect the Landlord, who is a license realtor, put the rental house on the market for a higher price to encourage the purchaser to remove his condition and complete the sale. His tactic worked and the purchaser was able to get a mortgage and remove all the conditions of the sale on June 4, 2010. The Landlord confirmed that all conditions of sale were removed June 4, 2010 and the property title transferred over the purchaser as of June 18, 2010. The Landlord confirmed it was the original purchaser, who requested vacant possession of the rental house, is who the title was transferred to.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act*; in this case the burden of proof lies with the Tenant.

I note that in support of her application the Tenant relied on her documentary evidence which included a letter from the purchaser dated March 26, 2010 which indicates his intent to purchase and occupy the property, as well as her testimony pertaining to a

March 31, 2010 letter issued by the same person requesting the Landlord issued the Tenant a notice to end tenancy. She is of the position that she is entitled to the compensation under section 51 (2) of the Act for an amount equal to two month's rent because at the time the 2 Month Notice to End Tenancy was issued (March 31, 2010) all of the conditions of sale had not been met. This section of the Act states as follows:

Tenant's compensation: section 49 notice

51 (2) In addition to the amount payable under subsection (1), if

(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

(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.

Based on the Landlord's affirmed testimony, the evidence supports that the purchaser, who made the request to have the Tenant issued with a Notice to End Tenancy, met all of the conditions of sale as of June 4, 2010 and the property title transferred into this purchaser's name as of June 18, 2010, less than three months after the March 31, 2010 Notice to End Tenancy was issued and 18 days after the effective date listed on the Notice.

I note that the Tenant's argument that all the conditions of sale were not met prior to issuing the Notice could be evidence to support an application to cancel the Notice to End Tenancy however that argument does not meet the burden of proof for compensation under section 51(2). Based on the aforementioned I find the Tenant has provided insufficient evidence to support that steps were not taken to accomplish the stated purpose for ending the tenancy or that the rental unit was not used for the stated purpose; therefore I dismiss the Tenant's application.

As the Tenant was not successful with her application, I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Tenant's application, 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: December 01, 2010.

Dispute Resolution Officer