



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Service of the hearing documents, by the Tenants to the respondents, was done in accordance with section 89 of the *Act*, sent via registered mail on July 23, 2010. Mail receipt numbers were provided in the Tenant's verbal testimony. The respondents confirmed receipt of the hearing documents.

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

Issues(s) to be Decided

1. Was a 2 Month Notice to End Tenancy issued to the Tenants at the request of the purchasers of the rental property?
2. If so, were steps taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice?
3. If not, has the Tenant proven entitlement to monetary compensation as a result of the property not being used for the stated purpose?

Background and Evidence

The Tenant testified that she had a fixed term tenancy agreement with the previous owner that was effective April 15, 2008 and switched to a month to month tenancy after February 15, 2009. Rent was payable on the 15th of each month in the amount of \$1,000.00. She vacated the rental unit due to a 2 Month Notice to End Tenancy for which she provided notice to vacate earlier than the effective date.

The Tenant stated that she was informed by the owner in February 2010 that the property was being sold. The respondents viewed the property in March 2010 and three days later, March 27, 2010, she was served the 2 Month Notice to End Tenancy, effective June 1, 2010. She began her search for other accommodations and when she found them she informed the Landlord she was moving out. She stated that her Landlord was not aware of the laws so she informed the Landlord of her entitlement to one month's free rent. She stated that she believes the issuance of the 10 Day Notice and application for Direct Request was some sort of underhanded move on the part of the Landlords because it did not make sense to her why a 10 Day Notice was issued and served after she had already given notice that she would be vacating the unit. She confirmed that she never saw a copy of the decision as it was not written until April 29, 2010, two days after she had vacated the unit.

The Tenant referred to the copies of advertisements which supports the new owners listed the unit for rent immediately. She stated that when she saw these advertisements she contacted the new owners and explained to them that what they were doing was not in accordance with the Act. They did not have communication with the new owners afterwards until she served them with notice of her application.

The respondents testified and confirmed they viewed the rental property in March 2010. They made an offer to purchase March 14, 2010 and they read the conditions during the hearing that were to be removed by March 19, 2010. The male respondent read the contents of their document titled "removal of subject to clause and assignment of

conveyancer” which included instructions given to the owner of the property to give legal notice to the tenant to vacate the property by June 1, 2010. He confirmed the document lists that the purchasers are to have vacant possession on June 1, 2010. The female respondent confirmed they have rented out the property effective September 1, 2010.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act*.

Section 51 of the *Act* 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.

(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.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

After careful review of the testimony and evidence before me I find the offer to purchase issued by the respondents included that the previous owner issue the Tenants with “legal” notice to end the tenancy. The title of the property changed on or about June 1, 2010, and the respondents began to advertise the unit for rent immediately. The property has been rented out as of September 1, 2010.

Based on the aforementioned I find there to be sufficient evidence to support the Tenants’ application for compensation pursuant to section 51(2) of the Act and I hereby approve her claim of \$2,000.00.

Conclusion

A copy of the Tenants’ decision will be accompanied by a Monetary Order in the amount of **\$2,000.00**. This Order must be served on the respondents and may be filed in Provincial Court 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: December 10, 2010.

Dispute Resolution Officer