



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicants for compensation pursuant to section 51 of the Residential Tenancy Act (the Act) in respect to a section 49 Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Respondents on February 1, 2010. The Notice caused the Applicants to vacate by February 28, 2010.

Service of the hearing documents, by the Applicants to the Respondents, was done in accordance with section 89 of the Act, sent via registered mail on September 20, 2010. The Respondents are deemed to be served the hearing documents on September 25, 2010, the fifth day after they were mailed as per section 90(a) of the Act.

Despite being duly served, the Respondents failed to appear for the hearing.

Both the Applicants appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Are the Applicants entitled to a monetary order?

Background and Evidence

The tenancy ended on February 28, 2010 after the Applicants, on February 1, 2010, were served a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") under section 49 of the Act. The cause listed on the Notice was 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 monthly rent was \$850.00.

The Applicants testified and submitted evidence that the Respondents initially informed them, in mid January 2010, that they, the Applicants, were to be evicted due to the Respondents' plans to completely renovate the premises by adding a third floor and

moving their families in. The Applicants further testified that renovations began in mid January while they were still living in the rental unit, but that they were served the Notice on or about February 1, 2010.

The Applicants testified and submitted evidence that they were pressured into moving earlier than the move out date listed on the Notice, April 1, 2010, which created a hardship on them given that they were students.

The Applicants testified and submitted evidence that after they vacated the rental unit, the entire home was gutted to begin extensive renovations, which included the rental unit being completely dismantled.

The male Applicant testified and submitted evidence that he visited the home several times to collect mail, and that the home appeared to be undergoing extensive renovations so that it could be placed back on the rental market or sell it.

The Applicants testified that they received a cheque issued by Respondent CB which appeared to be from that of a real estate development company owned by the said Respondent, which served to illustrate that the purchase was an investment rather than for their residence.

The Applicants testified that after a period of six months, on September 3, 2010, they returned to the premises and the extensive renovations were still ongoing, including the roof of the house being torn off and an entire new floor being added. The testimony and evidence indicated that construction materials and debris were overfilling the front yard.

The Applicants testified that as of the day of the hearing, the rental premises were still gutted and unusable, but that it appeared that construction had stopped altogether.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Once the Applicants made an Application to dispute the Notice alleging it has been given in bad faith, the onus is on the Landlords/Respondents to prove the Notice was issued for its stated purpose.

Section 51 of the Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) *A tenant who receives a notice to end 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.*

(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 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.

I find the Respondents failed to appear to prove the Notice was issued for its stated purpose.

I accept the testimony and evidence of the Applicants that the Respondents never intended to move into the rental unit and have not moved into the rental unit in the ten months after the tenancy ended, causing reasonable doubt as to the reasons for the notice to end the tenancy. I find the testimony and evidence of the Respondents are credible and that on a balance of probabilities an ulterior motive existed whereby the Respondents ended the tenancy.

I find that the Applicants have established a total monetary claim of **\$1,750.00**, representing the amount of \$850.00 monthly rent, doubled, and the \$50.00 fee paid by the Applicants for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.



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Conclusion

The Applicants are granted a monetary order for **\$1,750.00**.

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: January 04, 2011.

Residential Tenancy Branch