



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Act. The tenant was seeking the equivalent of two month's rent under section 51(2) and a monetary order for damage and losses caused by the wrongful termination by the landlord.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant was entitled to be compensated for resulting damages and losses caused by the landlord terminating the tenancy in violation of the Act.
- Whether the tenant is entitled to the equivalent of two months compensation because the landlord failed to use the rental unit as described in the notice to end tenancy.

The burden of proof is on the tenant to prove that she was wrongfully evicted and entitled to resulting damages. The burden of proof is on the landlord to establish that the rental unit was utilized for the stated purpose shown on the notice within a reasonable time after the termination and continuing for 6 months thereafter.

Background and Evidence

The tenancy began in August 2003 and ended on October 31, 2009 based on a Notice to End Tenancy for Landlord Use.

The tenant testified that the landlord had wrongfully evicted the tenant. The tenant dedicated substantial testimony arguing that the termination of the tenancy allegedly for landlord's use was not in compliance with the Act and the tenant was seeking damages

including her moving costs and other expenses related to the claimed wrongful termination of the tenancy.

In addition to the above, the tenant testified that: 1) the landlord did not take steps to accomplish the stated purpose within a reasonable period after the effective date of the Notice and 2) the landlord did not use the rental unit for that stated purpose for at least 6 months. The tenant testified that she is therefore entitled to receive the equivalent of two month's rent in compensation under the Act.

The landlord disputed the tenant's testimony and pointed out that in a previous dispute resolution decision resulting from a hearing dated May 26, 2010, the dispute resolution officer had found that the landlord did end the tenancy in compliance with the Act. The landlord stated that there was no wrongful eviction and therefore the tenant's claim for damages and compensation for alleged wrongful eviction therefore had no merit.

The landlord testified that the previous decision of May 26, 2010 also found that the landlord did take steps towards utilizing the property for the stated purpose within a reasonable amount of time. The landlord pointed out that this issue was resolved at the previous hearing and should not be heard nor considered a second time.

With respect to the tenant's allegation that the property was not utilized for the stated purpose for at least six months, the landlord testified that:

- the tenancy was ended on October 31, 2009,
- the rental unit was dismantled and was fully removed by May 26, 2010,
- a different mobile home was brought onto the site on October 10, 2010 and
- the site was not re-rented until February 1, 2011.

The landlord's position was that the site was kept for the landlord's nonresidential use from October 31, 2009 until February 1, 2011, thereby significantly exceeding the mandatory 6-month period under the Act.

Analysis: Tenant's Claims

Equivalent of Two Months Compensation

Section 49(6)(f) of the Act states that a landlord can end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use. Section 51(2) of the Act states that, in addition to the amount payable under section 51(1), the landlord must 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 if 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.

I find that there was a previous determination that the landlord took steps to accomplish the purpose within a reasonable time and I therefore lack jurisdiction to make any further determination of this particular matter.

I find that the only outstanding issue still left to be determined is whether or not the landlord used the rental unit for the stated purpose for at least 6 months. I find that the landlord had effectively converted the unit to non-residential use for a period of approximately 15 months, after which the landlord resumed renting a replacement manufactured home unit on the same site for residential purposes.

Given the above, I find that the tenant is not entitled to be compensated the equivalent of 2 months rent under section 51 of the Act as the 6-month window had lapsed during the period in which the rental unit was not being used for residential purposes.

Damages

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the tenant's claim for damages fails to meet element 2 of the test as the landlord did not commit a violation of the Act. I find that it was already determined at a prior hearing that the landlord had properly ended the tenancy in compliance with the Act. Therefore I find that no compensable damages arose from the ending of this tenancy.

Conclusion

Based on the testimony and evidence, I find that the tenant is not entitled to any monetary compensation stemming from the landlord's alleged noncompliance with the Two Month Notice to End Tenancy for Landlord's Use, nor damages caused by a wrongful eviction.

Accordingly, the tenant's application is dismissed in its entirety 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: March 2011.

Residential Tenancy Branch