



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act for the equivalent of two months rent under section 51(2) applicable when a Two-Month Notice to End Tenancy for Landlord's Use under section 49, has been issued and the landlord has then failed to utilize the unit for the purpose stated in the Notice.

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

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the landlord, after ending the tenancy for landlord's use, then failed to utilize the rental unit for the purpose stated in the Notice.

Background and Evidence

Both parties acknowledged that the Two-Month Notice was issued to terminate the tenancy for the purpose of allowing the landlord or a close family member of the landlord, to move into the rental unit. Both parties confirmed that the tenant vacated in June 2011, pursuant to the Notice.

The tenant testified that on June 28, 2011, just prior to vacating of the unit, she was witness to a conversation between the landlord and a person appearing to be a renter negotiating the details of a new tenancy.

The tenant stated that on June 30, 2011, while she was in the process of moving her possessions out, the landlord was urging her to hurry because there was a new tenant waiting to take possession as soon as possible.

The tenant testified that she later contacted the new occupant and he identified himself as the tenant now living in the unit she had vacated. According to the tenant, this individual stated that he had rented the unit after responding to an advertisement. The tenant testified that the new renter provided his telephone number and made a promise to forward any of the tenant's mail to her.

The tenant testified that, in looking up the property on-line, she also became aware that the subject residence was also listed for sale.

Based on the above data, the tenant therefore concluded that the landlord was not utilizing the rental premises for the purpose stated on the Two-Month Notice.

A copy of the notice was submitted into evidence which indicated that the tenancy was being terminated because: *"the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse."*

The tenant testified that, once it became obvious that the tenancy was being terminated for the purpose of re-renting it, the tenant made an application for dispute resolution on July 5, 2011.

The tenant's position was that, the fact that the unit was evidently re-rented to a third party who was not a close relative of the landlord, and the fact that the premises were put up for sale prior to the 6-month period specified in section 51 of the Act, would support the conclusion that the unit was not used for the purpose stated in the Notice and the landlord is therefore obligated under the Act to compensate the tenant the equivalent of two-months rent in the amount of \$2,048.00

The landlord testified that it was the landlord's intention for the rental unit to be occupied by the landlord's son and in fact her son moved into the unit and was living there from July 1, 2011 to the present time. The landlord's son was not present at the hearing to give witness testimony, but the landlord submitted a handwritten and signed note dated July 1, 2011 from the landlord's son addressed to the manager of the complex, indicating that he was now residing in the subject unit. Also in evidence was a handwritten note from the landlord's son dated August 11, 2011 addressed only to "HSBC" purporting to be a request for a change of address to the subject unit. Correspondence from HSBC dated September 6, 2011 was addressed to the landlord's son at the subject address.

The landlord stated that she was also occupying the unit as well, and submitted a handwritten statement testifying that she resided in the unit. The landlord included a hydro bill dated August 11, 2011 that was issued by the company to the landlord in her name showing the subject address.

The tenant argued that, the fact the hydro was placed in the landlord's name, does not constitute proof that the landlord was actually residing in the unit. The tenant pointed out that other evidence submitted by the landlord contradicts her claim that she was living in the unit. A document titled, "Policy Declaration" insuring the subject property

dated August 6, 2011 showed that the landlord was residing at an address that was different from the rental unit on that date.

The landlord also stated that, the fact she had arranged to do some renovations, would support her contention that she and her son were residing in the unit and not renting it out.

However, the tenant testified that this fact would support that the landlord's motive in ending the tenancy was so that she could merely put the unit up for sale.

The landlord pointed out that the individual met by the tenant in the unit on June 28, 2011, was not a new tenant, but was a friend of her son's who was helping out. According to the landlord, this individual was looking through the rental unit to give an opinion about painting and repairs that may be needed. The landlord testified that he was also assisting her son with his move into the unit. With respect to the allegation that this person had agreed to forward the tenant's mail, the landlord acknowledged that she was not present during this conversation between the tenant and the third party. However, according to the landlord, the promise made by this third party was merely that he would let the landlord know about the tenant's request to have her mail forwarded.

Although the landlord never called the above individual as a witness to give testimony, the landlord did submit support in the form of a hand-printed statement purporting to be written by this party, stating that he was only a friend of the landlord's son and was not paying rent.

Analysis:

Section 49(3) of the Act provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. All agreed that this was the stated purpose given for ending the tenancy. Section 51(2) of the Act states that in addition to the one month payable under section 51(1), the landlord must also 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 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 the landlord would be able to terminate the tenancy with a Two Month Notice to End Tenancy for Landlord's Use to sell the unit, only if, there was a signed offer and acceptance and all conditions of sale were satisfied and a written demand from the

purchaser for vacant possession so that the purchaser or close family member could live in the unit was presented to the landlord, prior to issuing the Notice,.

I find that the landlord could end the tenancy through a Two Month Notice to End Tenancy for Landlord's Use to renovate the unit, only if the renovations were such that the unit needed to be vacant to complete them and that all permits and approvals were in place before issuing the Notice.

If the intention was to re-rent the unit to another tenant, I find that the landlord could not legally end this tenancy in order to re-rent to another individual at all.

I find that this tenancy was purportedly terminated to permit the landlord or a close family member to live in the rental unit. In order to legally end a tenancy for landlord's use, based on a Two Month Notice for that purpose under section 49(3) of the Act, the landlord would be required to prove that steps were taken to utilize the unit for the stated purpose within a reasonable period after the effective date of the Notice..

I find that the parties differed on exactly what occurred with respect to the ending of the tenancy. I find that the landlord was not there when the tenant had the conversation with a person who identified himself as a new tenant. Despite the hand-printed note that the landlord submitted as being from the same third party that the tenant spoke to, I find that the individual in question never appeared to confirm this written statement nor to be cross-examined. I accept the tenant's first-hand evidence that the person she spoke to did inform her that he was a paying tenant who was moving into the same rental unit that she was vacating at the time.

I find that, despite producing the hydro bill in the landlord's name, the evidence supports that the landlord herself did not actually move into the unit.

I find that the verification confirming that the landlord's son resided in the unit verified that this was the case as of September 6, 2011. I find that this evidence was generated long after the tenant had already made her application claiming against the landlord. .

In this instance I find that the landlord's stated intent was for the landlord or close family member to *occupy the unit* and the tenant accepted the termination of the tenancy on this basis. This would create a statutory obligation for the landlord to use the property for the specific purpose stated *within a reasonable time*.

I find landlord's testimony with respect to meeting this obligation was challenged by the tenant and the landlord's documents in evidence fell short of sufficiently meeting the landlord's burden of proof to establish that the unit was utilized for the stated purpose within a reasonable amount of time.

Given the above, I therefore find that under section 51(2) the tenant is entitled to receive \$2,046.00 comprised of double the monthly rent of \$1,023.00 .

Conclusion

Based on the testimony and evidence, I hereby grant the tenant a monetary order in the amount of \$2,046.00 against the landlord. This Order must be served on the landlord in person or by registered mail and may be filed in the Provincial Court (Small Claims) 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: October 05, 2011.

Residential Tenancy Branch