



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

At the outset of the hearing the landlord's agent testified that she should not have been named as respondent on this Application. The agent repeatedly denied being the agent of the landlord.

I specifically asked the agent if the tenancy agreement listed her as the agent and she said yes, but denied being the "legal" agent of the landlord. I also asked if she signed the 2 Month Notice to End Tenancy on behalf of the landlord in the signature block that listed either the landlord or the landlord's agent, she said yes, but again denied that she was the landlord's agent.

Despite the tenant's testimony, based on the documentary evidence listing her as the landlord's agent, I find that the respondent named is the landlord's agent. Based on this finding, I amend the tenant's Application to include both the agent and the landlord as respondents in this matter.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for for compensation or monies owed and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by both parties on May 15, 2011 for a month to month tenancy that began on May 15, 2011 for a monthly rent of \$500.00 due on the 1st of the month with a security deposit of \$250.00 paid. The tenant shared the rental unit with the landlord's daughter/agent.

The tenant also submitted a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord's agent on July 8, 2011 with an effective date of September 8, 2011 citing a family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares and the landlord intends to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

The tenant testified that she has not received any compensation for receiving the Notice and that the landlord is not using the rental unit for the purposes stated in the Notice to End Tenancy. The landlord's agent acknowledges the landlord has not paid the tenant any compensation at all.

During the hearing the landlord's agent testified that there actually is not a family corporation but rather that her father owns the property and she intended to live in the rental unit. She further testified that she now has responsibility as manager for the entire residential property which includes the rental unit that she lives in and the unit in the basement of the house.

When asked why these changes required this tenant to vacate the rental unit the landlord's agent testified that she and the tenant were not getting along and in her written submission she states that this had been the 4th attempt to ask the tenant to leave.

Analysis

Section 49 of the Act allows a landlord to end a tenancy by giving notice to end it on an effective date that is not earlier than 2 months after the date the tenant receives the notice if a landlord:

- Who is an individual if the landlord or a close family member of the landlord intends to occupy the rental unit;
- Who is a family corporation if a person owning voting shares in the corporation or a close family member of that person intends to occupy the rental unit;
- Has entered into an agreement to sell the rental unit;
- Has the necessary permits to demolish the rental unit; renovate the unit; convert the unit to a strata lot; convert the property into a cooperative; convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
- Converts the rental unit to a non-residential use.

Section 51 states that a tenant who receives such a notice is entitled to compensation equivalent to one month's rent and that if the landlord does not take reasonable steps to accomplish the stated purpose with a reasonable period after the effective date of the notice, the landlord must pay the tenant an additional amount equivalent to two month's rent.

As per the testimony of both parties, I accept the landlord has failed to issue the tenant compensation in the equivalent of 1 month's rent for issuing a 2 Month Notice to End Tenancy for Landlord's Use as is required under Section 51.

I find that since the landlord is not a family corporation, the landlord cannot use this subsection to end the tenancy as there would not be anyone who owns voting shares and as a result I also find the landlord has failed to use the unit for this stated purpose.

In relation to the landlord's other stated reason to end the tenancy: "convert the rental unit for use by a caretaker, manager, or superintendant of the residential property", I find that since the landlord's agent (now caretaker, manager, or superintendant) already lived in the rental unit with this tenant, the landlord cannot use this subsection to end the tenancy, as there is no need to "convert" the unit. As such, I find the landlord has again failed to use the unit for the stated purpose of "converting" the unit.

Despite my findings above that the landlord could not use these reasons to end the tenancy they are the reasons given to the tenant for ending the tenancy. I accept the tenant, acting in good faith, vacated the rental unit in accordance with the notice.

As such, I find the landlord has failed to use the rental unit for either of the stated purposes in the 2 Month Notice to End Tenancy for Landlord's Use.

Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,550.00** comprised of \$500.00 1 month's rent compensation; \$1,000.00 2 month's rent compensation and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: November 21, 2011.

Residential Tenancy Branch