



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 the Tenant's Application for Dispute Resolution seeking monetary compensation equivalent to double the monthly rent under the tenancy agreement under section 51 of the Act and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Was there a breach of section 51 of the Act by the Purchasers?

Background and Evidence

On or about August 2, 2011, the Respondents in this matter purchased the subject rental unit property from the former landlord of the Tenant. In this Decision I refer to the Respondents as the "Purchasers".

On or about May 26, 2011, the Tenant was served with a two month Notice to End Tenancy with an effective end date indicated as August 1, 2011 (the "Notice").

In the Notice the reason for ending the tenancy is set out as,

"All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The Tenant testified she lived in the subject rental unit for eight years prior to getting the Notice. The Tenant testified she believed that the Purchasers did not intend to occupy the rental unit as it was in poor condition. She testified she believed they would build another house on the property.

The Tenant testified she would have stayed in the rental unit for at least another month, or longer, in order to find a better rental unit to move into.

The Tenant testified she wanted to talk to the Purchasers and explain to them she was willing to continue to live in the rental unit. The Tenant testified that she spoke with the realtor who was acting in the property transaction, but the realtor would not provide the Tenant with the contact information, apparently citing privacy concerns.

The Tenant testified she vacated the rental unit on August 2, 2011. She testified she used a Notary to do a property search to find out the names of the Purchasers.

The Purchasers testified that after the Tenant vacated the rental unit they did not move in. They testified that they did not realize when they purchased the property it was in such disrepair. They testified they felt the house was beyond repair and they could not move in.

The Purchasers provided written submissions which begin with the following statement, "On August 2, 2011 we bought the property at [the rental unit address] with the intention to demolish the old cottage and replace it with a modern livable house for a family member." [Reproduced as written.]

The Purchasers did not identify the family member they intended the new house to be for.

They testified and submitted evidence that they have applied for a permit to demolish the subject rental unit. They also submitted a letter from a builder who writes that in early August of 2011, he was contacted by the Purchasers to design a new dwelling for the property.

The Purchasers testified they did not feel the house was safe to move into and they felt they would be in breach of the Act by continuing to rent out the property.

The Purchasers also submit that there is no provision on the Notice form for them to have notified the Tenant they were purchasing the property to demolish it and construct a new house.

Both parties agree that no one has occupied the rental unit since the Tenant vacated.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Purchasers have breached section 51 of the Act, by failing to occupy the rental unit as they indicated they would in the Notice.

Residential tenancies in the Province of British Columbia are subject to the Act. The Act sets out all ways in which a tenancy may legally end.

Section 49 of the Act reads,

...

- (5) A landlord may end a tenancy in respect of a rental unit if
- (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:**
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit; ...**

[Emphasis added.]

Under section 51(1) of the Act, once the Notice was given under section 49 and the Tenant acted upon it, the Tenant was entitled to compensation equivalent to one month of rent.

The Act also contains a provision in section 51(2), which requires additional compensation to be paid to the Tenant in certain circumstances:

...

- (2) In addition to the amount payable under subsection [51](1)[compensation equivalent to one month of rent], 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.

As described above, the stated purpose for ending the tenancy in the Notice was that the Purchasers, or a close family member (defined in the Act as father, mother, spouse or child), intended in good faith to occupy the rental unit.

In this case, the rental unit has not been used for this purpose for any period of time during the six months since the tenancy ended.

I find that the Purchasers did not intend in good faith to occupy the rental unit, as stated in the Notice. It is clear from their written submissions their intent was to demolish the rental unit. They attempted to contradict this somewhat with their testimony, however, I accept the written submissions and their actions as a clear statement of their intentions with regard to the property.

Furthermore, as explained to the parties during the hearing, the actual condition of the rental unit was not relevant to the issue in this matter. The issue in this matter was whether or not the Purchasers had occupied the rental unit as set out in the Notice.

The Purchasers also argued they had taken steps to accomplish the stated purpose in that they applied for a demolition permit and are waiting for various approvals from the municipality. They testified that once the approvals and permits are obtained they would demolish the rental unit, build a new dwelling and have a family member live there. With this argument it appears the Purchasers are submitting that the Notice was given under section 49(6) of the Act, where a landlord intends to demolish the rental unit and gives a tenant a two month Notice to End Tenancy. This is not the Notice that was given to the Tenant. Furthermore, it is important to note that this portion of the Act requires all the necessary permits and approvals required by law to be obtained prior to the two month Notice to End Tenancy being issued. I find this argument does not apply to the circumstances here.

The purpose of these portions of the Act includes, but is not limited to, protection for tenancies from unnecessarily having to end and to compensate renters for the cost of doing so when the tenancy is ending solely for the benefit of the property owner. The doubling provisions in these specific portions of the Act are intended to further compensate a renter for the losses of having to move when the tenancy has ended for purposes other than those set out in the Notice and in the Act.

As explained to the Purchasers at the end of the hearing, the preferred action here would have been for the tenancy to continue until they had obtained all the necessary approvals and permits required by law to demolish the property. At that point they could have given the Tenant the required two month Notice to End Tenancy, with the appropriate reason for ending the tenancy indicated in the notice. Had it been done this way, the tenancy would have ended in accordance with the Act.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Having found the Purchasers have not complied with the Act, I find the Tenant has established a monetary claim under section 51(2) in the amount of **\$1,550.00**, comprised of \$1,500.00 (double the monthly rent) and the \$50.00 filing fee for the Application. I grant and issue the Tenant a monetary order in those terms, which must be served on the Purchasers and may be enforced in the Provincial Court (Small Claims Division).

Conclusion

The Tenant has established a claim for \$1,550.00, as the Purchasers failed to occupy the rental unit as was indicated on a two month Notice to End Tenancy issued to the Tenant.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 1, 2012.

Residential Tenancy Branch