



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application for a Monetary Order for compensation from the landlord for failure to use the rental unit for the purpose stated on a 2 Month Notice to End Tenancy for Landlord's Use of Property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the tenant established that the landlord did not use the rental unit for the purpose stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice)?

Background and Evidence

The tenancy commenced September 1, 2009 and the tenant was required to pay monthly rent of \$650.00. The tenant moved out either May 31, 2010 or June 15, 2010.

Although neither party provided a copy of the 2 Month Notice it was not in dispute that the landlord had issued such a notice to the tenant in the approved form, with an effective date of May 31, 2010, and that the stated purpose for ending the tenancy was that:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenant's agent submitted that the landlord had indicated that the reason for ending the tenancy was because the landlord's mother was arriving from India and would be occupying the rental unit. The tenant moved out but stayed within the same neighbourhood. Approximately 3 to 6 months after the tenancy ended other persons

appeared to be occupying the suite and those persons did not appear to be the landlord's mother.

In support of the tenant's position the tenant acquired the vehicle registration information for two vehicles parked at or in front of the residential property.

The tenant is seeking compensation equivalent to two months of rent pursuant to section 51 of the Act.

The landlord submitted that his mother lived at the property from July 2010 through January 2011 and then the unit was re-rented to the current tenant. The current tenant of the rental unit was at the hearing and confirmed that the tenant provided registration information for his two vehicles. The current tenant stated that he and the landlord entered into a verbal tenancy agreement that commenced on February 15, 2011.

The tenant's agent questioned whether the landlord's mother actually lived in the unit as the mother was never seen coming or going from the rental unit. The current tenant confirmed that there is an interior adjoining door between the rental unit and the landlord's living space. The current tenant confirmed that when he wanted the view the unit he understood it was occupied and that when he did view the rental unit there was an older woman at the property looking after the landlord's children.

Analysis

A 2 Month Notice to End Tenancy is a way to end a tenancy for landlord's use of property and is provided for under section 49 of the Act. Where a landlord gives a tenant a 2 Month Notice, the landlord has an obligation to fulfill the reason stated on the Notice and if the landlord does not fulfill the reason the tenant may be entitled to additional compensation equivalent to two months of rent. The landlord's obligation is provided under section 51(2) of the Act. It provides, in part,

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.

An applicant generally bears the burden to prove their case. The burden is based on the balance of probabilities, meaning it is more likely than not that the events occurred as submitted by the applicant.

In this case, the tenant has relied upon two observations in support of the application:

1. A person that could be the landlord's mother was not observed coming or going from the rental unit; and
2. A person that could not be the landlord's mother was observed coming and going from the rental unit starting 3 to 6 months after the tenancy ended.

Although the tenant did not observe the landlord's mother at the rental unit does I find this insufficient to conclude the landlord's mother did not in fact occupy the rental unit or that the landlord was not otherwise using the rental unit for his own use. Whereas, I did receive testimony from the current tenant that he understood that the unit was occupied before he rented it and that when he viewed the property he observed an older woman looking after children at the property.

Given the close family relationship of the landlord and his mother I find it probable that the mother would have used the interior adjoining door to enter and exit the unit, which may explain why the mother was not seen coming or going from exterior rental unit door. Therefore, I find the tenant's lack of observation of a person that appeared to be the landlord's mother coming or going from the rental unit insufficient to satisfy me the mother did not move in to the rental unit.

I also heard that a new tenant has since moved into the unit and that was not in dispute. However, in order to succeed with this application, I must be satisfied that the new tenant was likely residing in the rental unit less than six months after the tenant's tenancy ended. In this case, I find the tenant's submissions to be vague as to when a new tenant was observed coming and going from the rental unit. According to the tenant's agent's own testimony, a new tenant began occupying the rental unit at a time that may have been six months after the tenant's tenancy ended. Further, I was provided testimony from the current tenant that he moved in more than six months after the tenancy ended.

Based upon the evidence before me, or lack of evidence, I find I am not satisfied that the tenant has shown that the landlord had a new tenant move in to the rental unit less than six months after the tenancy ended or that the landlord otherwise failed to fulfill the reason stated on the 2 Month Notice. Therefore, I dismiss the tenant's application.

Conclusion

The tenant's application has been dismissed.

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: April 04, 2012.

Residential Tenancy Branch