



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC and OLC

Introduction

This matter was originally scheduled to be heard on February 15, 2012 but the application was dismissed with leave to reapply when the telephone conference call system failed. The re-application was scheduled again for April 20, 2012 but was adjourned as the landlord's counsel had reasonably but incorrectly concluded that evidence submitted for the failed hearing would automatically be forwarded to the new file.

The hearings were convened on the tenants' application monetary compensation in the equivalent of two months' rent on the grounds that the landlord did not use the rental unit for a purpose stated in a Notice to End Tenancy for landlord use under section 49 of the *Act*

Issues to be Decided

Did the landlord take the landlord take steps toward accomplishing the purpose stated in the notice within a reasonable period after the effective date of the Notice?

Background and Evidence

This tenancy began on November 1, 2010 at a monthly rent of \$1,950. A security deposit of \$950 was disposed of in a previous hearing. There was no written rental agreement.

The tenancy ended on or about May 31, 2011 pursuant to a two-month Notice to End Tenancy for landlord use issued on March 29, 2011.

During the hearing, the applicant tenants submitted that the Notice to End Tenancy had cited the landlord's intention to use the rental unit to accommodate a close family member.

They stated that the landlord had told them it was his intention to accommodate a nephew, and later stated that he needed the rental unit to provide housing for his mother, now 100 years old, and her caregiver.

The landlord stated that he had never intended anything other than to accommodate his mother and her caregiver as he had learned through previously accommodating two elderly aunts and their caregiver that the home care support in Burnaby, where the unit is located, is outstanding.

The tenants stated that they had occasion to pass by the rental unit and to observe it while visiting friends in the area and that they had seen no sign that the rental unit was occupied.

The landlord, through his legal counsel, concurred that the rental unit had not been occupied. By way of explanation, he stated that, when he regained possession the rental unit, that lingering odours from the tenants pets, two English Bulldogs and a cat, was so overwhelming that he could not move his mother into the rental unit.

The parties disagree on whether the landlord was aware of and approved of the pets, but the landlord states that if he had known of them, he would at least have required a pet damage deposit.

In any event, the landlord submitted a photograph of one of the bedroom floors with what appears to be a one-square foot corner area of the floor which has been literally blackened by what he believes to be pet urine. Pictures of the yard show a very large area of the lawn destroyed by what the landlord believes was pet urine.

As a matter of note, the landlord submitted an invoice for \$3,360 paid six months before the present tenancy began for sanding, filling and applying four coats of urethane on the oak floors.

The tenants deny the odour, but stated that even if the landlord found strong odours, he had ample opportunity to remedy the problem.

The landlord's counsel submitted that the landlord had been prevented from carrying through with his intention to move his mother into the rental unit as a direct consequence of the tenant's failure to meet their duty under section 37 of the Act to ...“leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...”

The landlord's legal counsel stated that after three months of attempting to render the unit odour free, the landlord gave up and listed the property for sale. He was able to find a buyer and new owners took over the property in December of 2012.

Analysis

Section 51 of the Act provides, in part, that:

- (2) In addition to the amount payable under subsection (1), 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.

In the present matter, I find the pertinent question to be whether the landlord took steps within a reasonable time after the conclusion of the tenancy to make the rental unit reasonable fit for occupancy of his elderly mother.

I accept the evidence of the landlord that he did, in fact, intend to use the rental unit to house his mother and her care taker, and that he did try various remedies, including time, to erase the pet odour.

I concur with the landlord's counsel that pet owners, such as the tenants, become desensitized over time to pet odours that are pungent to persons not accustomed to pets as is the case with the landlord.

I further find, on the balance of probabilities, that pet urine to a degree that might have blackened the floor area provided in the photographs can permeate floor coverings and seep into the subfloor leaving trace odours for long periods.

Given that the landlord voluntarily forfeited one-month's rent in giving two-month's notice under section 49 of the *Act*, after he had not seized on early opportunity to end the tenancy on a 10-day notice for unpaid rent and given that he voluntarily forfeited several months rent before listing the property, I am at a loss to identify an ulterior motive that would have called the good faith of the Notice into question.

I find that the landlord's change of plan was necessitated by the malodorous condition in which they left the rental unit.

Therefore, I grant the benefit of the doubt to the landlord and dismiss this application without leave to reapply.

Conclusion

The application is dismissed 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: April 20, 2012.

Residential Tenancy Branch