



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain an Order to have the Landlords comply with the Act, regulation, or tenancy agreement and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Was a 2 Month Notice to End Tenancy for Landlord's use issued and served upon the Tenants in accordance with sections 52 and 49 of the *Residential Tenancy Act*?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order pursuant to sections 51 and 67 of the *Residential Tenancy Act*?

Background and Evidence

At the outset of the hearing the Tenant advised she did not receive copies of the Landlord's evidence which consisted of the female Landlord's sworn affidavit. The Tenant stated that she has been out of town so could not have received the evidence. The Landlord stated she left the evidence at the Tenant's door on the same day the Tenant left evidence at her door therefore refuting the Tenant's statement that she was out of town.

I informed the Landlord that she was at liberty to present her evidence orally during the hearing as I would not be considering the written affidavit in my decision as the Tenant

alleges she did not receive it.

Upon review of the Tenant's application she acknowledged that she requested an Order to have the Landlord comply with the Act in error and confirmed she wished to withdraw this request.

Both parties affirmed that they were in agreement with the following facts:

- The parties entered into a verbal month to month tenancy agreement that began in December 2009; and
- Rent was payable on the first of each month in the amount of \$1,600.00 and the Tenants paid \$800.00 as the security deposit which has since been returned to the Tenants; and
- The Tenants gave verbal notice to the Landlord on November 15, 2012 that they were ending their tenancy effective December 4, 2011; and
- The Tenants vacated the property on or before December 4, 2011; and
- Neither a 2 Month Notice to End Tenancy for Landlord's Use or any other form of written notice was issued by the Landlords to the Tenants to end the tenancy.

The Tenant argued that during a telephone conversation with the Landlord on November 1, 2011 she was told that the Landlord was selling the residence to her partners and that they would be occupying the unit in February 2012. She said that a few days later the Landlord asked if they wanted the notice to move out in writing and she told the Landlord no as they had always done everything verbally.

The Tenant stated they found a place that they wanted to take and informed the Landlord that they were giving the ten day notice to end the tenancy early and that the Landlord owed them compensation equal to one month's rent for asking them to move so she could sell the property. She later found out from a previous neighbour that new tenants have occupied the unit since they moved and not the new owners which is why she is seeking compensation equal to two month's rent.

The Landlord confirms having a conversation with the Tenant near the beginning of November 2011 where she mentioned her friends' interest in purchasing the property. She noted that even though she mentioned this to the Tenant, she did not have a written offer to purchase, there was never any discussion about the Tenant having to move out or that she could no longer rent the property, and there was never any written notice issued to the Tenant to end her tenancy.

The Landlord reference a text message sent by the Tenant to her on October 14, 2012 whereby the Tenant questions if the Landlord spoke with the downstairs tenants and states that if the Landlord was not able to get them to move the Tenant was going to move. The Landlord argued that it was the disputes between the applicant Tenant and the downstairs tenants which was the motivation for the Tenants to move and not a suggestion that the Landlord may be selling the property in the future.

Through cross examination the Tenant confirmed she may have sent that text message October 14, 2011; that she did have issues with the downstairs tenants being very loud; and that the downstairs tenants had complained about her being loud. The Tenant questioned why the Landlord paid her half of a month's rent if she did not ask them to move.

The Landlord acknowledged that the relationship became very confrontational at the end when the Tenant was demanding the compensation. The Landlord did not feel obligated to pay the Tenant because no notice had been issued and did so to end the acrimonious relationship. The Landlord stated that in fact she felt threatened herself by the text message that was sent by the Tenant demanding \$3,200.00. The Landlord advised they are of the position that no notice was ever issued and that the Tenant was motivated to vacate the property because of issues she was having with the downstairs tenants.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included copies of text messages between the parties.

The Tenant has sought compensation pursuant to Section 51(2) of the Act which provides that a tenant who receives a notice to end a tenancy under section 49 of the Act [*landlord's use of property*], is entitled to receive compensation equal to double the monthly rent payable if steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period of time and for at least six months.

Section 49 of the Act stipulates the reasons how a landlord may end a tenancy for landlord's use of the property while Section 49(7) states that a notice under this section **must comply** with section 52 of the Act. [My emphasis added].

Section 52 of the Act stipulates as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form. [My emphasis added]**

In this case both parties agreed the Landlords did not issue the Tenants a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Tenant has the burden to prove she was issued notice to end this tenancy pursuant to section 49 of the Act for Landlord's use of the property. Accordingly, the only evidence before me pertaining to how this tenancy ended was verbal testimony and I find the disputed verbal testimony insufficient to meet the burden of proof.

Conclusion

As per the aforementioned, I find there is insufficient evidence to prove the Landlord issued a 2 Month Notice to end this tenancy for landlord's use of property. Accordingly I dismiss the Tenants' claim.

The Tenants have not been successful with their application; therefore they must bear the burden of the cost to file the application.

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: May 02, 2012.

Residential Tenancy Branch