



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, although none was submitted, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation pursuant to section 51(2) of the *Act* because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, and whether the Tenant is entitled to recover the fee for filing her Application for Dispute Resolution, pursuant to section 72(1) of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2000 and that the Tenant vacated the rental unit on July 03, 2010.

The Landlord and the Tenant agree that on April 03, 2010 the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*. The Notice indicated that the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. The Notice indicated that the Tenants must vacate the rental unit by June 30, 2010. A copy of the Notice to End Tenancy was not submitted in evidence.

The Landlord stated that when the Landlord served the Notice to End Tenancy she believed one of her sons was moving to Victoria and intended to move into the rental unit with his family; that for personal reasons her son did not move to Victoria; that repairs to the rental unit were completed in July of 2010; that her son's furniture was moved into the rental unit on September of 2010; that her son periodically occupied the unit on week-ends when he was visiting in Victoria between September of 2010 until it was re-rented; and that the rental unit was re-rented on February 01, 2011.

The Tenant stated that the rental unit appeared to sit empty for many months; that she does not know if it was periodically occupied by the Landlord's son; that they updated the windows on the third floor; and that she was advised that two women moved into the rental unit in February of 2012.

The Tenant contends that the Notice to End Tenancy was not served in "good faith" because the Landlord did not inform her that her son intended to move into the rental unit when she was given post-dated rent cheques in March of 2010, and because she provided the Landlord's other son with information regarding her right to the quiet enjoyment of her rental unit.

The Landlord stated that the Tenant had been complaining of noise from her other son's rental unit since 2006 or 2007 and that the information regarding the right to the quiet enjoyment of the rental unit was not related to the service of the Two Month Notice to End Tenancy.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*, which indicated that the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. I specifically note that the legislation does not require the Landlord or a close family member of the Landlord to "reside" in the rental unit, which is a significantly more stringent requirement.

The *Act* does not define the term "occupy" however Black's Law Dictionary defines it as "to take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in: to take or hold possession. In my view, a Landlord is occupying a rental unit if the Landlord, or in these circumstances a close family member of the Landlord, is using the rental unit for his/her own purposes and is not permitting another party to occupy the unit. In my view, a Landlord or a close family member of the Landlord is occupying the rental unit if the son is periodically using the rental unit as a vacation accommodation or if they are simply storing personal property in the unit.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after

the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the Tenant submitted insufficient evidence to show that the steps were not taken to have a close family member of the Landlord occupy the rental unit. In reaching this conclusion I was heavily influenced by the testimony of the Landlord, who stated that they made repairs to the rental unit in July of 2010; that furniture was moved into the rental unit in September of 2010; and that her son periodically stayed in the rental unit between September of 2010 and February of 2011. In reaching this conclusion I specifically note that the Tenant submitted no evidence that refutes this testimony. In my view making repairs to the rental unit and moving furniture into it one month after the tenancy ended shows that the Landlord has taken reasonable steps, within a reasonable period of time, to accomplish the stated purpose for ending the tenancy under section 49.

Section 51(2)(b) of the *Act* stipulates that if the rental unit was 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 must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. On the basis of the testimony of the Landlord and in the absence of evidence that refutes that testimony, I find that the Landlord occupied the rental unit for the month of July when repairs to the unit were made and that her son periodically occupied the rental unit for six months until it was rented out to new tenants.

In determining this matter I have found no reason to conclude that the Landlord was not acting in good faith when she issued the Notice to End Tenancy. Given that the Tenant had made previous complaints regarding noise, I cannot find that an attempt to enforce her right to quiet enjoyment precipitated the service of this Notice to End Tenancy. This argument would seem more credible, in my view, if the Landlord had issued the Notice to End Tenancy when the Tenant first complained of noise.

Similarly, the fact that the Landlord did not inform the Tenant of her intent to end the tenancy when she received post-dated cheques in March of 2012 is not, in my view, a sign of bad faith. Rather, the acceptance of the cheque is simply an indication that the Landlord did not have a concrete plan regarding the future of the rental unit.

In determining this matter I placed no weight on the testimony that the Landlord updated the windows on the third floor, as it is not relevant to whether or not the unit was being occupied by the Landlord or her son.

Conclusion

As I have found that the Tenant has failed to establish that the Landlord or a close family member of the Landlord has not taken reasonable steps to move into the rental unit and/or has not occupied the rental unit for a period of at least six months, I dismiss the Tenant's claim for compensation pursuant to section 51(2) of the *Act*.

I find that the Tenant's Application for Dispute Resolution has been without merit and I therefore dismiss her application to recover the cost of filing the Application for Dispute Resolution.

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: June 25, 2012.

Residential Tenancy Branch