



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 an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act for the equivalent of two months rent under section 51(2). This section entitles a tenant to compensation when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued and the landlord failed to utilize the unit for the purpose stated in the Notice.

Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the landlord, after ending the tenancy for landlord's use, then failed to utilize the rental unit for the purpose stated in the Notice with the Act beginning within a reasonable period.

Background and Evidence

Both parties acknowledged that the Two-Month Notice was issued to terminate the tenancy for the stated purpose of allowing the landlord to move into the rental unit. A copy of the notice was submitted into evidence showing that the tenancy was being terminated as: *"the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) or the landlord's spouse."*

Both agreed that the tenant complied with the Notice by vacating the unit. The landlord stated that this occurred on March 15, 2012, and the tenant stated that she moved out on March 1, 2010.

The tenant testified that they suspected that the landlord was not genuinely intending to move into the unit because of the unsuccessful attempts that had been made in the past to terminate the tenancy in order to sell the house. The tenant testified that they cautioned the landlord that, should the home not be used for the stated purpose, the tenant would pursue compensation under the Act. The tenant testified that, after they vacated, the landlord did not move in and their friends in the neighbourhood advised them that the house was left vacant. The tenant testified that on May 26, 2012, they went to the unit and noticed that a "for sale" sign had been placed in the window. The

tenant took photos of the interior through various windows that clearly showed the home to almost be empty and it was evident to the tenant that the landlord had not moved into the unit as stated in the Notice. Copies of these dated photos were in evidence.

The tenant testified that, in order to verify whether or not the landlord was living in the unit, or intended on occupying it in the near future, it was arranged that a third-party would pose as an interested buyer and request a showing. On July 29, 2012, this individual was shown through the unit and was apparently told, by the person showing it, that the unit was not occupied and that immediate possession was possible. A written statement from the third party was in evidence.

The tenant stated that the landlord had only taken action to move into the unit in advance of the hearing once the Notice of Hearing was served on June 7, 2012. The tenant stated that the landlord took occupancy for the sole purpose of avoiding a penalty. The tenant testified that, prior to that, the unit was unoccupied and would have remained so until a buyer was found. The tenant pointed out that the renovations and repairs finally being done were to help sell the property.

The landlord testified that he and his family are now living in the unit, having moved in as soon as possible, on June 1, 2012. Photos of furnishings, personal possessions and people in the rental unit were submitted into evidence by the landlord on July 16, 2012.

The landlord testified that, even prior to that date, he was staying in the unit with his friend, who was a guest. The landlord stated that he and his friend found it necessary to enter the unit through the garage door on March 17 as the tenant had not returned the key and they found a lot of damage in the unit at that time.

The landlord testified that they could not fully move in until June because the unit required significant cleaning and renovations and was subject to an insurance claim to fix the damage. The landlord submitted a copy of the "cash settlement" statement from the insurance company showing it was issued on April 30, 2012. The "date of loss", indicated on the statement, was March 14, 2012. According to the landlord, the renovations began on May 6, 2012.

In the landlord's undated written statement, submitted on July 16, 2012, the landlord stated that he had not yet furnished the unit and that he was in the process of deciding whether he wanted to down-size and live elsewhere, instead of occupying the unit.

With respect to the tenant's testimony that the house was up for sale, the landlord argued that the building has been on the market since 2010, but the tenant had intentionally thwarted efforts to sell the home during her tenancy. The landlord contested the written witness statement that, upon viewing the house as a potential

buyer, he was told that nobody occupied the unit and that immediate vacant possession was available.

The tenant pointed out that the alleged damage, which was the subject of the insurance claim, had occurred much earlier during the tenancy when a pipe burst inside the wall and the tenant had to do an emergency repair at that time because the landlord was not available. The tenant testified that the landlord refused to fix the damage that resulted and ignored their requests to address the situation during the tenancy. The tenant testified that any delay in moving in that was supposedly caused by the repair, was attributable to the landlord's failure to maintain the unit and do necessary repairs during the tenancy.

The landlord had submitted several utility invoices showing the dispute address for the location of the service, including dates, amounts as well as the landlord's name and mailing address. Although two cable bills for April 24 and June 24, 2012 were addressed to the landlord at the dispute address, the mailing address for the landlord that was shown on most of the invoices, some issued as late as June 20, 2012, did not feature the dispute address for mailing, but showed the landlord to be receiving mail at a different address, that the landlord identified as his parent's address.. The landlord acknowledged that his current driver's license also did not show the dispute address as his current address.

The tenant's position was that the landlord did not occupy the unit as his residence which was the purpose stated in the Two-Month Notice. The tenant stated that the landlord was therefore obligated under the Act to compensate the tenant the equivalent of two-months rent in the amount of \$3,000.00.

The landlord's position was that he did occupy the rental unit within a reasonable period, given the renovations. The landlord's position was that, although the unit was for sale, this was not the motive for ending the tenancy.

Analysis:

Section 49(3) of the Act provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. All agreed that this was the stated purpose given for ending the tenancy. Section 51(2) of the Act states that in addition to the one month payable under section 51(1), the landlord must also pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if 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 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.

It was firmly established, based on the evidence and testimony of both parties, that the landlord did have the subject property for sale. However, I find that this fact in itself is *not* proof that the landlord failed to occupy the rental unit, as given for the reason for ending the tenancy. I find that this did raise a logical doubt about whether or not the landlord was actually intending to utilize the rental unit for the purpose stated in the notice.

In this instance, to support his testimony that he was residing in the unit, the landlord provided photographic evidence to show that by, or before, July 16, 2012, people were occupying the home who the landlord identified in photos as his family. Furniture was also shown in the photos.

That being said, there were dated photos submitted into evidence by the tenant verifying that the unit was essentially vacant as late as May 26, 2012. Written testimonial evidence was also provided indicating that the unit was being shown as a vacant unoccupied home on May 29, 2012, 2 days before the landlord's alleged move-in date.

I find that the landlord's photos were not dated and could have been taken any time between May 29, 2012 and July 16, 2012, the date when they were submitted into evidence.

I find that I cannot accept the landlord's testimony that the home was occupied by the landlord and his guest prior to June 1, 2012. I also find on a balance of probabilities that the landlord did not move his family into the unit on June 1, 2012. I find that several utility bills dated well after June 1, 2012 showed the landlord's old address at the top as the mailing address where the invoice had been sent. The landlord has also apparently neglected to change the address on his driver's license to reflect that he is now residing in the house. I find that, if the landlord now occupies the home, this likely occurred sometime in mid-July, 2012, if at all.

Although I accept that the unit was subject to an insurance claim and was undergoing renovations, I find that the landlord has not sufficiently proven that these renovations had completely prohibited him from occupying the home for the duration claimed and prevented the required occupancy to commence within a reasonable period.

Given the above, I find that the landlord has failed to prove, on a balance of probabilities, that the rental unit was to be occupied by the landlord for at least 6 months beginning within a reasonable period after the effective date of the notice. I therefore

find that, under section 51(2), the tenant is entitled to receive \$3,000.00 comprised of double the monthly rent of \$1,500.00.

Conclusion

Based on the testimony and evidence, I hereby grant the tenant a monetary order in the amount of \$3,000.00 against the landlord. This Order must be served on the landlord in person or by registered mail and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: August 08, 2012.

Residential Tenancy Branch