



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

On July 30, 2012, at a Dispute Resolution Hearing the tenant was granted a monetary order.

On August 8, 2012, the respondent made an application for review consideration, which was granted on the basis that they were unable to attend at the original hearing because of circumstances that could not be anticipated and were beyond their control.

The Dispute Resolution Officer ordered the parties to participate in a new hearing.

This review hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation under the Act?

Background and Evidence

On June 30, 2011, the tenant was served with a 2 month notice to end tenancy due to a condition of sale that the purchaser will be occupying the unit. The notice indicated that the "purchaser or a close family member intends in good faith to occupy the rental unit." The tenant accepted the notice and vacated the unit on July 15, 2011.

The tenant testified that he went to the premises in February 2012, and the premise was being renovated, he explained to the purchaser, who was onsite, that he was the prior tenant. The tenant stated he asked the purchaser if he would be renting the basement unit in the future. The response of the purchaser was that they would see at a later date, however, the unit would have to be legal and it still required a lot of work. The tenant asked the landlord how much rent would be and the landlord responded that he was not sure.

The tenant testified that on May 17, 2012, he went to the premises and spoke with the purchaser. The tenant stated during that conversation the purchaser told him that his family moved into the residence in March 2012, and that his brother in-law had moved into the basement unit in April 2012 and would not be renting the basement unit to anyone.

The tenant testified that he believes the purchaser did not use the rental unit for the reasons stated in the notice and seeks to be compensated the equivalent of double the monthly rent.

The purchaser testified that he took possession of the residence on September 1, 2011 and in order to make the residence suitable for his family to live in, a renovation was required. The purchaser stated it would be unreasonable to have to have his family live in the residence while renovations were being completed.

The purchaser testified the tenant showed up at his home in February 2012 and started asking him questions. The purchaser agreed he told the tenant he may consider renting the basement unit at a later date, however, he only said that because he felt sorry for the tenant and wanted to make him feel better.

The purchaser testified his family moved into the premises in March 2012 and they felt harassed by the tenant as he kept coming around his property uninvited. The purchaser stated on May 17, 2012, he told the tenant that his brother in-law started living in the basement unit in April 2012, however, he only said that to make the tenant go way and leave his family alone.

The purchaser testified he has never rented the unit to any person or had any other person live in the basement unit. The purchaser stated the only people that have stayed in the basement unit were his daughters when their families came for a short visit from out of province.

The witness (IB) testified that he was the purchaser's real estate agent and stated the purchaser has not breached the 2 month notice to end tenancy that the tenant was served with. The witness (IB) stated the purchaser had legal possession of the premises and, therefore he occupied the premises.

The witness (KM) testified that he lives next door to the purchaser and the purchaser has never rented the premises to anyone and that no one has live in the basement unit. The witness (KM) stated that the only people that have stayed in the basement unit have been family members when they come for a visit from out of town and are merely guests.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant was served a 2 month notice to end tenancy and vacated the unit on July 15, 2011. The purchaser took legal possession of the premises on September 1, 2011.

The 2 month notice to end tenancy states the reason for ending tenancy is as follows:

“All of the conditions of sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give Notice because the purchaser or a close family member intends in good faith to **occupy** the rental unit.”

[Emphasis added]

The evidence of the tenant was he believes, due to the renovation and the conversations he had with the purchaser that the purchaser has not used the property for the reason stated in the notice.

The evidence of the purchaser was that he purchased the property for his family and had to renovate the interior to make it suitable to live in and that it would be unreasonable to make his family live in their home while renovations were being completed. The evidence was seven month later the renovations were completed and they moved into the residence and after that time only family members have stayed in the basement unit when coming for visits. This was confirmed by the evidence of (KM).

The evidence of the purchaser's witness (IB) was that he believes the purchaser has complied with the notice even though the landlord was not residing in the premises, while the premises were being renovated for their family needs. The evidence of the witness (IB) was the purchaser always retained legal possession therefore was occupying the unit as stated in the notice.

As the meaning of occupy was questioned, I have refer to the Black's Law Dictionary sixth edition for the legal meaning of occupy.

*Occupy. 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.*

[Emphasis added]

The evidence was on September 1, 2011, the purchaser took legal possession of the premises. The evidence was the purchase held possession of the premises while a renovation was being completed and in March 2012, the purchaser and his family moved into the premises to reside.

I find the purchaser has met the definition of occupy as defined in the Black's Law Dictionary as the purchaser took possession on September 1, 2011 and held possession of the premises for his own use. Black's Law Dictionary does not define occupy as to reside or to live.

Section 51(b) of the Act states, if 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 the amount that is the equivalent of double the month rent payable under the tenancy agreement.

[Emphasis added]

There was no evidence submitted that during the six month period from when the purchaser took possession of the premises that the purchaser had rented the unit, by posting ads for rent. There was no evidence that the purchaser had someone reside in the premises during this time period.

The evidence of the both parties was in February 2012, they had a conversation to the possibility of the unit being rented at a future date. The purchaser testified he said this only to appease the tenant.

The evidence of both parties was on May 17, 2012, they had a conversation, where purchaser told the tenant that his brother in-law moved in to the unit in April 2012. The purchaser testified he said this to the tenant to stop him from harassing and attending at their residence uninvited.

Even if I accepted the evidence of the tenant, and the brother in-law of the purchaser moved into the basement unit in April 2012, this was eight months after the purchaser took possession or occupied the premises as defined, and is outside the required time of six months.

As a result, I find the purchaser has not violated the Act and the tenant is not entitled to be compensation. The tenant's application is dismissed and the monetary order granted to the tenant on July 30, 2012 is set aside.

Conclusion

The tenant's application is dismissed. The monetary order granted to the tenant on July 30, 2012 is set aside.

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: September 20, 2012.

Residential Tenancy Branch