



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 two month's rent under section 51(2) applicable when a Two-Month Notice to End Tenancy for Landlord's Use has been issued under section 49 and the landlord failed to utilize the rental unit for the purpose stated in the Notice .

Despite being served by registered mail sent on July 10, 2012, as confirmed by copies of the Canada Post tracking receipts, nobody for the respondent landlord appeared and the hearing was conducted in the landlord's absence.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord ended the tenancy for landlord's use and if so, is the tenant entitled to the equivalent of two months compensation under section 51(2)?

The burden of proof is on the landlord to establish that the rental unit was utilized for the specific purpose that was stated on the Notice within a reasonable period.

Background and Evidence

The tenant's tenancy began with a prior owner in October 2001. The rent was \$1,000.00 and a security deposit of \$500.00 was paid and has already been returned since the tenant vacated. The tenant testified that the landlord issued a Two Month Notice to End Tenancy for Landlord's Use effective March 31, 2012 which was received by the tenant on January 28, 2012. A copy of the Notice was in evidence.

The Two Month Notice indicated that the landlord entered into an agreement to sell the rental unit, all the conditions on which the sale depended had been satisfied, and the purchaser had requested, in writing, that the landlord give notice to end the tenancy on the ground that the purchaser or a close family member of the purchaser, intended in good faith to occupy the rental unit.

The tenant stated that, although they had been tenants for over a decade, they did not dispute the Notice and accepted in good faith that the rental unit would be utilized for the stated purpose indicated on the Two Month Notice to End Tenancy for Landlord's Use. However, they later became aware that the landlord had submitted a development application to the municipality and had also re-rented the unit to other occupants that

were not “close family members” of the landlord, charging them higher rent than the tenant paid. A copy of the development application was submitted as evidence.

The tenant testified that this landlord is now obligated under the Act to compensate them the equivalent of two months’ rent in the amount of \$2,000.00 because the landlord failed to use the rental unit for the purpose stated for ending the tenancy.

Analysis

Section 49(5) provides that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I find that the tenant had named, as respondent in this dispute resolution application, was their current landlord at the time who had issued the Two-Month Notice. In regard to the issue of who the respondent landlord should be, I find that the definition of “*landlord*” detailed in section 1 of the Act states that it includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this; (my emphasis)

I find that the named respondent, who was the landlord at the time, and who issued the One Month Notice to End Tenancy for Cause, is responsible for compliance with section 49 of the Act and for any compensation that may be due under section 51(2).

In this instance the stated intent on the Notice was for the new owners or their family members to reside in the unit. Given this fact, I find that they proceeded to use the rental unit for a different purpose than that stated as the reason to end the tenancy.

Section 51(2) of the Act states that in addition to the one month compensation payable under section 51(1), the landlord must 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.

Accordingly, I find that under the Act the tenant must be paid \$2,050.00 comprised of \$2,000.00 for equivalent of two months' rent and the \$50.00 cost of the application.

Conclusion

Based on the testimony and evidence, I hereby issue a monetary order in the amount of \$2,050.00 in favour of the tenant. This Order is final and binding and must be served on the landlord in person or by registered mail. If unpaid, it 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: September 27, 2012.

Residential Tenancy Branch