



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, FF, O

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, 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; for an Order requiring the Landlord to comply with the *Act*, Regulation, or tenancy agreement; to recover the fee for filing this Application for Dispute Resolution; and for "other".

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Did the Landlord serve the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property; is the Tenant entitled to compensation for being required to vacate the rental unit; and is the Tenant entitled to recover the for filing this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 01, 2011; that the Tenant is currently obligated to pay monthly rent of \$1,600.00 by the first day of each month; and that the Tenant is still residing in the rental unit.

The Landlord and the Tenant agree that on November 28, 2012 the Landlord placed a letter, dated November 28, 2012, in the Tenant's mail box. This letter informs the

Tenant that the Landlord wishes to move back into the rental unit by the “latest date of March 31, 2013”.

The Tenant with the initials “S.M.” stated that “soon after” they received the letter dated November 28, 2012, they discovered that the letter did not serve as legal notice to end the tenancy. The Landlord and the Tenant agree that the parties had several conversations regarding whether the letter, dated November 28, 2012, served as legal notice to end the tenancy.

The Landlord and the Tenant agree that the Tenant sent the Landlord a letter, dated January 13, 2013, in which the Tenant informed the Landlord of her obligation to compensate the Tenant the equivalent of one month’s rent. The Tenant also provided her with a blank Two Month Notice to End Tenancy, which the Tenant wanted the Landlord to complete.

The Landlord and the Tenant agree that the Landlord sent the Tenant a letter, dated January 14, 2013, in which the Landlord informed the Tenant that she now understands the letter she served to the Tenant was not valid notice to end the tenancy; that she was no longer intending to end the tenancy; that the tenancy would continue on a month to month basis; and that she intended to increase the rent.

The Tenant contends that they accepted that the tenancy was ending on the basis of the letter they received on November 28, 2012 and they made arrangements to purchase a home.

The Tenant submitted a letter from a real estate agent, dated January 18, 2013, in which the real estate agent declares that he/she has been search for property for two of the Tenants since the beginning of December of 2012; that by the date of the letter they had made two offers to purchase a home; that by the date of the letter one offer had been accepted; and that by the date of the letter the parties were working towards removing the “subjects” of the offer.

The Tenant submitted a memorandum from a mortgage broker, dated January 21, 2013, in which the broker declares that she secured a mortgage rate for two of the Tenants on December 10, 2012 and that on December 25, 2012 she was in contact with the Tenant as they had an accepted offer to purchase a home.

Analysis

On the basis of the undisputed evidence, I find that the Tenant has never been served with a valid Two Month Notice to End Tenancy for Landlord’s Use, pursuant to section 49 of the *Act*.

I find that the letter dated November 28, 2012 does not comply with section 52(c) of the *Act* and does not, therefore, serve as a valid notice to end the tenancy, because it does not state the effective date of the Notice. Although it does declare that the Landlord

wishes to move in by the “latest date” of March 1, 2013, it does not clearly state when the tenancy will end.

More importantly, I find that the letter dated November 28, 2012 does not comply with section 52(e) of the *Act* and does not, therefore, serve as a valid notice to end the tenancy, because it was not served on the proper form and it does not provide the Tenant with a significant amount of information that is relevant to the rights and obligations of a tenant when a tenancy is being ended pursuant to section 49 of the *Act*.

As the letter dated November 28, 2012 did not serve as proper written notice to end the tenancy, I find that the Tenant was not obligated to vacate the rental unit as a result of this letter.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord, on or before the effective date of the landlord’s notice, an amount that is the equivalent of one month’s rent payable under the tenancy agreement. I find that the Tenant did not receive a proper notice to end a tenancy under section 49 of the *Act* and that the Tenant is not entitled to compensation that is the equivalent of one month’s rent.

In unique circumstances where the Landlord believed, in good faith, that the letter served to end the tenancy pursuant to section 49 of the *Act*; where the Tenant believed, in good faith, that the letter served to end the tenancy pursuant to section 49 of the *Act*; where the Tenant, in good faith, acted on the letter; and where the Tenant was unable to reverse the actions taken as a result of the letter, without incurring a loss, I might find that the Tenant was entitled to compensation pursuant to section 51(1) of the *Act*.

I find that shortly after receiving the letter dated November 28, 2012 the Tenant realized the letter was not a valid notice to end the tenancy. I base this conclusion on the testimony of the Tenant with the initials “S.M.”, who stated that they became aware of it “soon after” they received the letter, although he was unable to state the precise date they became aware of it.

I find that the Tenant was, or should have been, clearly aware that the letter dated November 28, 2012 did not serve to end the tenancy on January 14, 2013 when they received the letter from the Landlord, in which she informed them that she understands that the letter was not proper notice to end the tenancy and that she understood the tenancy would be continuing on a month to month basis.

Once the Tenant became aware that the letter did not serve to end the tenancy, the Tenant had the option of filing an Application for Dispute Resolution disputing the letter; ignoring the letter and remaining in the rental unit; or serving the Landlord with notice of their intent to end the tenancy.

I find that the Tenant has submitted insufficient evidence to establish that they had taken actions to find alternate accommodations that were irreversible by the time they

became aware that the letter did not serve as proper notice to end the tenancy. In reaching this conclusion I was influenced by:

- The failure of the Tenant to state precisely when they became aware that the letter did not serve as valid notice to end the tenancy
- The absence of documentary evidence, such as a copy of a contract of purchase and sale, which shows that the Tenant has an accepted offer to purchase a home and which shows the date the offer was made

In determining this matter I placed no weight on the real estate agent's declaration that two of the Tenants had been working with him/her since the beginning of December of 2012 or that they had made two offers to purchase a home, as these declarations do not establish that they had entered into an agreement to purchase a home.

In determining this matter I placed little weight on the real estate agent's declaration that the Tenant currently has an accepted offer and that they are removing the "subjects". As this declaration does not establish the date of the offer, it does not assist me in determining whether the offer was made before, or after, the Tenant became aware that the letter they had received was not proper notice to end the tenancy. As this declaration does not outline the nature of the "subjects" placed on the offer for sale, it does not assist me in determining whether the Tenant had the ability to rescind the offer once they became aware that they had not received proper notice to end the tenancy.

In determining this matter I placed no weight on the mortgage broker's declaration that she had secured a mortgage rate for two of the Tenants by December 12, 2012, as this declaration does not establish that they had entered into an agreement to purchase a home.

In determining this matter I placed little weight on the mortgage broker's declaration that the Tenant currently has an accepted offer on a home, as this declaration does not establish that this sale has, or will, complete.

In the absence of clear and irrefutable evidence that shows the Tenant entered into an agreement to purchase a home before they became aware the letter did not serve as valid notice to end the tenancy or that they were unable to rescind an offer to purchase a home after they became aware the letter did not serve as valid notice to end the tenancy, I cannot conclude that the Tenant made the decision to find alternate accommodations solely on the grounds of the letter, dated November 28, 2012, and/or that they were obligated to continue with the purchase of a new home once they were aware that they had not been served with proper notice to end the tenancy. I therefore dismiss the Tenant's application for compensation pursuant to section 51(1) of the *Act*.

Conclusion

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

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: February 21, 2013

Residential Tenancy Branch

