



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TINKER REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations, or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Are the tenants entitled to compensation equivalent to two month's rent pursuant to section 51(2) of the Act?

Background and Evidence

The month-to-month tenancy commenced March 2012 and the tenants were required to pay rent of \$850.00 on the 1st day of every month. On August 31, 2012 the property manager acting on behalf of the owner issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) to the tenants. The Notice had a stated effective date of October 31, 2012 and indicated the reason for ending the tenancy was because the rental unit would be occupied by the landlord, landlord's spouse or close family member. The tenants were provided compensation equivalent one month's rent and vacated the rental unit September 30, 2012.

The tenants are seeking additional compensation of two month's rent because the rental unit remained vacant after their tenancy ended and then sold in early March 2013 based upon a photograph of the property taken in early March 2013 showing a "for sale" sign with a sold sticker. The tenant had requested the property manager provide the name of the owner of the property; however, the property manager refused to provide it. The tenants proceeded to file this Application naming the property manager as the landlord.

The property manager testified that the Notice upon instructions of the owner. Those instructions were received in an email from the owner dated August 30, 2012, which was provided as evidence with the name of the owner removed. The email states:

“Please serve notice to the tenants to vacate [address of rental unit] as soon as possible. I need to have the house renovated and may possibly move into it myself. If this poses a concern, please contact me.”

The property manager testified that the property was listed for sale throughout most of the tenancy. The property manager submitted that after the tenancy ended the owner spent a few months renovating the rental unit but then it sold and the owner was unable to move into the rental unit. The property manager was uncertain as to when the rental unit was sold but did not dispute when the photograph was taken by the tenant.

The property manager also submitted that when the tenancy ended the property management contract with the owner ended. The property manager explained that the identity of the owner was not provided to the tenants to protect the privacy of the owner; however, the tenants were at liberty to determine the identity of the owner through other means available to the tenants, such as a land title search.

Analysis

Section 1 of the Act defines “landlord” to include the owner of the property, the owner’s agent or other person acting on behalf of the owner with respect to a tenancy, and includes a former landlord where the context requires this. Accordingly, where an owner is represented by a property manager, the tenant may name the former property manager in an Application where applicable. Although the property manager’s contract with the owner of the property may have ended when this tenancy ended it is the property manager that issued the Notice to End Tenancy and I find it appropriate that the tenants named the property manager in this Application.

Ending a tenancy for landlord’s use of property is provided under section 49 of the Act. Where a 2 Month Notice to End Tenancy for Landlord’s Use of Property is issued indicating the landlord, landlord’s spouse or close family member will occupy the rental unit as provided under section 49(3) of the Act, as in this case, section 49 of the Act specifies that “landlord” means an owner with at least a 50% interest in the property at the time the 2 Month Notice is issued.

Given the above, where a property manager issues a 2 Month Notice indicating the owner, owner's spouse or close family member intends to occupy the rental unit it is between the property manager and the owner to apportion any award payable to the tenants as a result of the issuance of a 2 Month Notice.

Where a tenant receives a 2 Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. Compensation for receiving the 2 Month Notice is provided under section 51(1) and is equivalent to one month's rent. Compensation payable to tenants under section 51(2) is in addition to compensation payable under section 51(1) and is intended dissuade landlords from issuing a 2 Month Notice to end a tenancy for ulterior motives.

The tenants have been provided compensation under section 51(1) of the Act. The issue to determine in this case is whether the tenants are entitled to additional compensation provided under section 51(2) of the Act.

Section 51(2) provides:

(2) In addition to the amount payable under subsection (1), **if**

(a) 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

(b) 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 an amount that is the equivalent of double the monthly rent payable** under the tenancy agreement.

[my emphasis added]

Since section 49 of the Act permits a landlord to end the tenancy for landlord's use in a variety of circumstances, including demolition or conversion of the rental unit to a non-residential use, I find the applicability of paragraphs (a) or (b) above depends upon the reason given on the 2 Month Notice. As the 2 Month Notice in this case was given so

that the landlord, landlord's spouse, or close family member of the landlord would occupy the rental unit I find paragraph (b) applies.

While renovations may have been necessary or desired in order for the owner, owner's spouse or close family member to occupy the rental unit, based upon the landlord's testimony I accept that such renovations were complete within a few months of the tenancy ending. As such, I find the owner, owner's spouse or close family member was required to occupy the rental unit after the renovations were completed for at least six months thereafter in order to avoid the applicability of section 51(2).

I accept the tenants' undisputed submission and evidence that the house was sold in early March 2013. Thus, despite the completion of the renovations a few months after the tenancy ended the rental unit was sold less than six months later and the owner, owner's spouse or close family member did not occupy the rental unit for the minimum six month period required.

In light of the above, I find rental unit was not used for the stated purpose on the Notice for at least six months starting within a reasonable period of time after the effective date of the Notice and the tenants are entitled to compensation equivalent two month's rent under section 51(2) of the Act. Therefore, I grant the tenants' request for compensation equivalent to two month's rent, or \$1,700.00. I further award the tenants recovery of the \$50.00 filing fee they paid for their Application.

The tenants have been provided a Monetary Order in the total amount of \$1,750.00 to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) and to be enforced as an order of the court.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$1,750.00 to serve and enforce as necessary.

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: July 02, 2013

Residential Tenancy Branch