



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 by the tenant for a monetary order for compensation for loss under the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issue(s) to be Decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The 12 year tenancy ended on February 29, 2012, pursuant to a two month notice to end tenancy for landlord's use of property. The reason for the notice was that the rental unit was sold and that the purchaser or a close family member of the purchaser intended in good faith to occupy the rental unit.

In her written submission the tenant states that as of December 03, 2012, the house remained vacant. Just prior to making this application in July 2013, the house was torn down. The tenant did not provide any information regarding the occupancy of the house for the period of April to December 2012.

The respondent who purchased the rental unit stated that she lived across the street and when this unit came up for sale she decided to purchase it for the use of her close family members. The rental unit is located in a duplex. At the time the duplex was listed for sale, the other half of the duplex was vacant. The purchaser stated that since the two halves are identical, she only viewed the vacant portion and decided that it was adequate for her family after the two units were connected making it one big house.

The purchaser stated that her family members moved into the vacant unit, end April. The purchaser contacted the municipality to obtain permits to renovate the house and cut a portion of the wall that divides the main house into two units.

The purchaser stated that the municipality refused to allow her to cut the wall because the house was an old timer and there was asbestos present inside the walls.

The purchaser's family found the half duplex too small for their needs as they have children. In the middle of May they moved out.

The purchaser stated that she encountered other personal family and financial issues, after her family members agreed to move in and then decided that it was too small and moved out. The purchaser stated that she has not rented the unit and is seeking a solution to allow her close family members to move in. At this time the house has been torn down and will be constructed to suit the needs of the purchaser's family who will move in upon completion of construction.

During the hearing, I asked the tenant if she had observed the presence of the family living in the unit for the short period of time in April/May 2012. The tenant stated that she had not gone by the house during that time and had no information regarding occupancy of the house during that period.

Analysis

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the purchaser's close family intended in good faith to occupy the rental unit. I find that on a balance of probabilities, the purchaser had requested the landlord to issue the notice to end tenancy in good faith. I further find that it is more likely than not that the purchaser's family moved in and then were unable to continue to occupy the unit after the local bylaws prevented them from cutting the walls to amalgamate the two units into one.

Based on the testimony of both parties, I find that the tenant rented the unit for approximately 12 years and if the purchaser had any intentions of renting the unit, it is likely that she would have retained the same long term tenant.

The purchaser has not rerented this unit to anyone and in order to make it suitable for her family members to move in, she has torn it down and is in the process of constructing accommodation that is suitable for their needs. The purchaser also confirmed that her family members still intend to move in upon completion.

Therefore I find that even though the purchaser's family used the unit for a short period of time, they moved in within a reasonable time after the tenancy ended.

I find that the reason for quick move out was for circumstances beyond the control of the purchaser. I also find that the purchaser is in the process of resolving the issues that were the cause of the short stay by the family and still intends in good faith to have her close family members occupy the rental unit upon completion.

Accordingly, I find that the tenant has not proven her case and I dismiss her application.

Conclusion

The tenant's application is dismissed in its entirety.

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 21, 2013

Residential Tenancy Branch

