



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dacheng Real Estate Development Co.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to sections 51(2) and 67 of the *Act*; and
- authorization to recover their filing fee for this application from the landlord(s) pursuant to section 72.

All parties were represented at the October 23, 2013 hearing (the original hearing) and all but the former landlord, WH, (the former landlord) were represented at the December 12, 2013 hearing (the reconvened hearing). The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to ask questions of one another.

Original Hearing and Interim Decision of October 25, 2013

After hearing evidence from the parties at the original hearing, I granted the request of the lawyer representing the current landlord for an adjournment of that hearing. I issued an Interim Decision on October 25, 2013, which I will not repeat in this final decision.

In my Interim Decision, I noted that the former landlord, who also represented the commercial landlord, confirmed that he received the tenants' dispute resolution hearing package sent by registered mail. The current landlord's lawyer confirmed that he had received a copy of the Notice of a Dispute Resolution Hearing provided to the current landlord by the tenants, but did not have any other documents from them, including a copy of their application for dispute resolution.

After considering Rule 6 of the RTB's Rules of Procedure, I noted that neither the tenant nor the former landlord objected to the request for an adjournment. As I was satisfied that the additional delay caused by granting the adjournment request would not significantly prejudice the rights of any of the parties to this proceeding, I allowed the request for an adjournment from the current landlord's lawyer. I attached Notices of

Hearing for the reconvened hearing of December 12, 2013 to my Interim Decision, noting the reasons for the adjournment.

Issues

Are the tenants entitled to a monetary award from either of the landlords' for the current landlord's alleged failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Background and Evidence

This tenancy commenced initially as a 12 ½ month fixed term tenancy on July 15, 2008. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent by the end of the tenancy was set at \$2,600.00, payable in advance on the first of each month. Although the tenants paid the then landlord a \$1,300.00 security deposit on July 12, 2008, that deposit has been returned to them.

The tenants entered into written evidence an undated copy of a typed notice to end tenancy from KH, who was representing the former landlord at that time. This notice, sent to the tenants in January 2012, was worded as follows:

Sorry to notice that you have to move because the house has been sold out yesterday...

The tenants provided written evidence that "We cited the Rental Tenancy Act and explained that we could not be asked to vacate on those terms, and requested an official Notice to End Tenancy." In their written evidence, the tenants also confirmed that they subsequently received "a Two Month Notice to End Tenancy for Landlord's Use of Property form dated January 10, 2012..., indicating that house had been sold and that the purchaser or a family member intended to occupy the house." After receiving this 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice), the tenants gave their February 6, 2012 written notice that they would be ending their tenancy by March 1, 2012. After discussions with the current landlord, the parties apparently agreed that the tenants would not have to pay their last month's rent. The tenants provided undisputed written evidence that they vacated the rental home on March 2, 2012, returning their keys at the joint move-out condition inspection on March 5, 2012.

The tenants maintained that the current landlord has failed to use the premises for occupancy by a family member, the stated purpose on the 2 Month Notice, and had now listed the property for sale. The tenants maintained that they were wrongfully evicted under section 49(1) of the *Act* and were entitled to a monetary equivalent to double their monthly rent as per section 51(2) of the *Act*. The tenants' claim for a monetary award of

\$6,375.00 included a request for the recovery of an additional two month's rent (\$5,200.00) and reimbursement for their \$1,175.00 in moving costs.

Analysis

Section 49 (5) of the *Act* reads in part as follows:

(5) 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;...

Section 51(2) of the *Act* establishes the provision whereby a tenant is entitled to a monetary award equivalent to double the monthly rent if the landlord does not use the premises for the purposes stated in the 2 Month Notice issued under section 49(5) of the *Act*. Section 51(2) reads in part as follows:

51 *(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.

The tenants' claim for compensation relies on their having received a 2 Month Notice issued by the former landlord. In this regard, I note that section 49(7) of the *Act* requires that "A notice under this section must comply with section 52 [form and content of notice to end tenancy]"

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form...

When the former landlord's agent issued the undated typewritten letter cited above, the tenants immediately called his attention to his need to follow the *Act* and issue a valid 2 Month Notice if it were his intention to end this tenancy for landlord's use of the property. They attributed the typewritten notice and the landlord's failure to complete the form properly to his lack of familiarity with his responsibilities as a landlord compounded by what they described as a significant lack of English language skills. While the landlord did sign and date the 2 Month Notice to comply with section 52(a), did identify a reason for ending the tenancy to comply with section 52(d), and did use the approved form to comply with section 52(e), the rest of the 2 Month Notice is totally blank. The 2 Month Notice did not cite any address for the rental unit, did not state an effective date, and did not even identify any names for the tenants in the 2 Month Notice. The former landlord simply wrote and signed his name with a date on the 2 Month Notice and filled in the address for the corporate landlord on the first page of the 2 Month Notice.

Having brought the former landlord's lack of compliance with the need to abide by the requirements of section 52(e) of the *Act* to the attention of the landlord's agent initially, I find it difficult to accept that the tenants were uninformed as to the requirements of the remainder of section 52 of the *Act*. Rather, the tenants appear to have conducted themselves as if the 2 Month Notice issued by the former landlord on January 10, 2012 was a validly issued notice to end tenancy because it expressed the former landlord's intention to have them end their tenancy, even though this Notice was clearly deficient. By February 6, 2012 and after seeking out alternative accommodation, the tenants issued their own written notice to end this tenancy, identifying March 1, 2012 as the date when they intended to vacate the premises. This was the only effective date identified by either party as to when this tenancy was to end.

As I stated at the hearing, I find that the former landlord's 2 Month Notice was so clearly flawed that it cannot form the basis for the tenants' claim for a monetary award for the

current landlord's alleged failure to abide by the terms of that notice. I find that the 2 Month Notice had no legal effect because it did not comply with the requirements of section 52(b) and (c) of the *Act* and did not even identify anyone who was to be evicted or from where they were to be evicted. I find that the tenants were already aware of the landlord's requirements to issue a valid notice to end tenancy, having raised this issue with the landlord's agent when the initial notice was given to them. Under these circumstances, I dismiss the tenants' application in its entirety without leave to reapply as I find that their claim relies on an acceptance of the validity of a 2 Month Notice, which I find to have been of no legal effect or force.

Conclusion

I dismiss the tenants' application without leave to reapply.

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: December 17, 2013

Residential Tenancy Branch

