



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the respondent by mailing, by registered mail on October 2, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the respondents are a landlord within the meaning of the Residential Tenancy Act?
- b. Whether the tenant is entitled to obtain a monetary order against the respondents and if so how much?

Background and Evidence

The written tenancy agreement identifies the landlord as PH & PS c/o Associated Property Management (2001) Ltd. and the applicant is the Tenant. It provided that the tenancy would commence on August 1, 2010 and end on July 31, 2011. The rent was

\$800 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$400 on July 15, 2010.

Some time during the fixed term the landlord replaced the agent named in the tenancy agreement with the corporate respondent. The individual respondent is employed by the corporate respondent.

On July 24, 2011 the respondent signed a 2 month Notice to End Tenancy which purported to end the tenancy on September 30, 2013 and served the tenant. The Notice indicates the respondent is acting as agent for PS. The grounds for ending the tenancy was the "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

The tenant did not dispute the Notice. She obtained the benefit of the equivalent of one moved rent as she is entitled to do under section 51(1) and she vacated the rental unit at the end of September.

The tenant testified that some work was done on the bathroom to the rental unit and it was subsequently re-rented to an elderly couple in December 2011. The tenant testified she visited the elderly couple in December 2011 and they showed that no renovations had been done and they were still having trouble with the bathroom.

The rental property was sold in the summer of 2012.

The individual respondent testified the corporate respondent is no longer the agent for the owner of the property and has not been the agent since the summer of 2012. The owner is involved in an orphanage project overseas and he has had no contact with her since the summer of 2012. He is not authorized to speak on behalf of the owner and has not acted as her agent since their agency contract ended after the sale of the rental property. He submits that to make a monetary order against him would in effect be

taking a monetary order against the owners who have not been served with the within application and are not aware of the proceedings. In effect this would be a denial of natural justice. He testified this information was conveyed to the tenant this last summer.

The tenant testified that she did not bring the application earlier as she had gone through several serious operations and it took her a period of time to locate the elderly couple who moved into the rental unit and to obtained evidence from them. .

Relevant Law:

SECTION 51 OF THE RESIDENTIAL TENANCY ACT:

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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 definition of landlord provides as follows:

"landlord", in relation to a rental unit, 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;

Analysis:

After carefully considering all of the evidence and the submissions of the parties I determined the respondent was not a landlord as defined by the Residential Tenancy Act at the time she filed her Application for Dispute Resolution and as a result the application must be dismissed. At all material times the respondent was acting as agent for the owner. In my view the expanded definition of "landlord" in the Residential Tenancy Act to include an agent applies to a situation where the respondent is acting as an agent for the owner at the time the Application for Dispute Resolution is filed. It should not be interpreted to include a previous agent especially where the applicant has not claimed against the previous owner. To hold the agent liable would in effect impose principal obligations on the agent which is contrary to the common law. In effect it would impose legal liability on a previous agent in a situation where his/her principal is not liable because the tenant did not bring a claim against the owner and the limitation period of 2 years has expired. The only reasonable interpretation of the expanding the definition of "landlord" in the Residential Tenancy Act to include agent is the agent was an agent at the time the claim was filed. The definition of "landlord" does not include previous agent.

The tenancy ended at the end of September 2011. The respondent acted as agent for the owner until the summer of 2012. The tenant had over 10 months to bring a claim where the respondent was still an agent for the owner. She had sufficient information

as to the status of the rental unit when she visited the rental unit in December 2011. It would not be appropriate to hold a previous agent liable in a situation such as this.

As a result I ordered that the claim against the respondents be dismissed without liberty to re-apply.

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 10, 2013

Residential Tenancy Branch

