



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.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

- Did the tenancy end pursuant to a two month notice to end tenancy for landlord's use of property or did it end pursuant to the fixed term tenancy agreement?
- If the tenancy ended pursuant to the notice to end tenancy, did the landlord use the premises for the purpose stated on the notice?
- Is the tenant entitled to compensation and the return of his filing fee?

Background and Evidence

The tenancy started on Oct 01, 2009 for a fixed term of one year. A copy of the tenancy agreement was filed into evidence. On that agreement the tenant initialled the term that states that on September 30, 2010, the tenancy ends and the tenant must move out of the residential unit.

On September 05, 2010, the parties entered into another fixed year term that would end on September 30, 2011 and the tenant would be required to move out. This went on for four years in succession and the final tenancy agreement was for a term that ended on September 30, 2013, requiring the tenant to move out on that date. All four tenancy agreements were filed into evidence.

The monthly rent was \$3,650.00 payable on the 31st of each month. The tenant rented the whole house and sublet rooms in the house. The tenant agreed that despite knowing that he had entered into a fixed term tenancy that would end on September 30, 2013, he sublet rooms for fixed terms that ended in February and May 2014.

On July 25, 2013, the landlord served the tenant with a notice to end tenancy for landlord's use of property with an effective date of October 01, 2013. A copy of the notice to end tenancy was filed into evidence. The reason for the notice was that the landlord or his family member intended to move into the rental unit.

The landlord stated that this notice was given to the tenant in error. The landlord's intention was to inform the tenant that the tenancy would end on September 30, 2013 as per the tenancy agreement and that he would not be entering into any further tenancy agreements.

The landlord stated that he had occupied the rental unit from 2003 to 2008 and missed the convenience of the proximity of the rental unit to his place of business. Therefore the landlord decided to move back in into the rental unit.

The tenant moved out on August 31, 2013. The parties discussed the situation that the subtenant AS found himself in due to the early end of the tenancy, of the main tenant who held the lease for the home. The landlord agreed to honor the agreement entered into by AS and the tenant. The landlord signed a fixed term tenancy agreement with AS for a tenancy which would end in February 2014 which is the end date of his term as a subtenant. AS continued to occupy a room in the basement.

On August 29, 2013, a flood occurred in the basement and the landlord allowed AS to occupy a room in the upstairs portion of the home while the restoration work was in progress.

The landlord stated that he used the house for storage of his belongings and for taking breaks during the day while running his own restaurant business. The landlord's daughter also testified that she used the home on weekends.

In an affidavit by AS, he confirms the landlord's testimony and adds that he regularly found evidence that the landlords or their daughter were in the home by way of food in the refrigerator and empty food containers in the garbage. The landlord kept the door to the master bedroom locked when he was away. The landlord stated that since the tenant moved out, the only occupant of the upstairs apart from the landlord was AS who moved back into the basement upon completion of the restoration work.

The landlord stated that on February 08, he allowed a single male who originated from the same country as the landlord originally did and was down on his luck, to occupy a room in the basement for one month.

The landlord stated that in February 2014, for financial reasons, he decided to stop using the rental unit for his needs and on February 19, 2014, he started advertising the home for rent. The landlord hoped to have it rented in March and therefore moved out of the house on March 14, 2014.

The landlord reiterated that he gave the tenant notice to end tenancy in error due to unfamiliarity with the English language. He stated that he wanted to inform the tenant that he would not be renewing the contract as he had done for the past four years. He stated that his intent was not malicious or for financial gain but simply because he wanted to move back into the rental unit, to avoid the long commute to his place of business.

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 with an effective date of October 01, 2013. The notice indicated that the landlord intended in good faith to occupy the rental unit.

The tenant was in a fixed term tenancy agreement that required him to move out on September 30, 2013. Despite this, the landlord served the tenant a two month notice to end tenancy for landlord's use of property with the effective date of October 01, 2013 which is one day after the end date of the fixed term tenancy. The landlord testified that he served the notice in error.

Based on the testimony of the landlord, I find that on a balance of probabilities, it is more likely than not that the landlord served the notice in error because the tenancy was set to end on September 30, 2013 and there was no reason for the landlord to serve such a notice on the tenant, thereby leaving himself open to claims such as this.

Even if I accept that the landlord is liable under section 49, I further find that the landlord had possession of the unit and used it for his purposes for the period of September 02 to March 14, 2014.

The landlord agreed to honor the agreement made by the tenant and his subtenant AS and accordingly allowed AS to continue to occupy the basement room that he had rented from the tenant. Since a flood occurred, the tenant was moved to a room in the upstairs area of the home. I find that the landlord did not rent the upstairs portion of the home to any other tenant for the period of September 02 to March 14, 2014, and left it available for use by him and his family. .

Therefore I find that the landlord used the unit for at least six months after the tenant moved out, for the purpose stated on the notice to end tenancy. Accordingly, even if I accept that the tenancy ended pursuant to the notice to end tenancy for landlord's use of property, I find that the tenant has not proven his case for compensation under section 49 and therefore I dismiss his application. The tenant must also bear the cost of filing this 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: June 20, 2014

Residential Tenancy Branch

