



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 a tenant's application for monetary compensation equivalent to two months' of rent as provided under section 51 of the Act. 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

Have the tenants established an entitlement to compensation equivalent to two months' rent as provided under section 51(2) of the Act?

Background and Evidence

The tenancy commenced in October or November of 2001. At the end of the tenancy the monthly rent was \$1,440.00. The tenants received a *2 Month Notice to End Tenancy for Landlord's Use of Property* dated August 12, 2013 with a stated effective date of October 31, 2013 (herein referred to as the Notice).

The Notice served upon the tenants indicates two reasons for ending the tenancy:

- The rental unit will be occupied by the landlord or landlord's spouse or close family member (father, mother or child) of the landlord or landlord's spouse.
- The landlord has all the 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 Notice was accompanied by a letter describing the landlords' intentions with respect to the property after the tenancy were to end, including: renovations and use by the landlord's son, and possible purchase, or use by the landlords themselves as they

were finding “landlording” increasingly difficult and exhausting given the ongoing problems with the rental unit.

During the hearing, the tenants acknowledged that some repairs were required in the latter part of their tenancy due to a water leak that originated in the upper unit on July 17, 2013, which they described as mainly drywall repair and carpet replacement, but they were of the position that they could have continued the tenancy whilst such repairs were made. In fact, the tenants wished they could have remained in the rental unit as they had to move from the area in order to find suitable accommodation.

The tenants submitted that they were of the understanding the landlords were ending the tenancy and going to renovate the unit so that their son could move into the rental unit. As such, the tenants did not file to dispute the Notice. The tenants vacated the rental unit on September 25, 2013 and were refunded the rent they had paid for September 2013.

In April 2014 the tenants discovered that the landlords were advertising the rental unit for rent for a much greater amount. The landlords confirmed that the rental unit was re-rented for \$1,750.00 starting June 15, 2014 after a significant renovation that included the creation of additional living space.

The landlords submitted that it was the intention for their son and his family to move into the rental unit, or purchase the property, upon transferring to the area; however, the son’s transfer requests have been unsuccessful to date. The landlords explained that they could not afford to continue to leave the rental unit vacant and have re-rented it for a one-year fixed term. The landlords’ son continues to submit transfer requests every three months, as is permitted, and other arrangements will have to be made to accommodate their son if his transfer takes effect before the end of the current fixed term tenancy. While the landlords’ son did not move-in to the rental unit, the landlords maintained that they fulfilled the reason(s) indicated on the Notice.

The landlords submitted documentary evidence showing that approximately \$65,000.00 worth of renovation activities were undertaken between November 2013 and June 2014 and the landlord’s testified that during this time the unit was not occupied by anybody else. The landlords described the scope of the renovation to include:

- removal of a large heating unit that took up a considerable amount of square footage on the lower floor of the house and the removal of this heating unit resulted in more living space available for the lower unit;
- another bathroom and a dining area were added to the living space of the rental unit;
- the laundry area was relocated;
- the flooring was replaced;
- the walls repainted;
- the kitchen and existing bathroom were upgraded; and,
- the house was re-wired.

The landlords explained that permits were not required as the rental unit is “legal non-confirming” and the municipality only requires permits for exterior or structural alterations; however, the rental unit needed to be vacant in order to complete the renovations, especially considering the female tenant was sensitive to air-quality issues.

The tenants argued that the renovations should not have been started prior to the landlords’ son being approved for a transfer. The landlords countered that position with the argument that it is not up to a tenant to dictate when a landlord undergoes a major renovation. The landlords also stated that the water leak was a catalyst in deciding that it was time for a renovation.

Analysis

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.

Under section 51(1) of the Act a tenant entitled to receive the equivalent of one month’s rent as compensation for receiving a 2 Month Notice. This compensation has been received by the tenants in this case.

Should the landlord fail to fulfill the purpose stated on the Notice to End Tenancy the landlord must pay the tenant additional compensation in an amount equivalent to two month’s rent under section 51(2) of the Act. This is the section of the Act the tenants rely upon in making their claims against the landlord.

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 ...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The Notice served upon the tenants contained two stated purposes for ending the tenancy and I find that I am satisfied the landlords satisfied both stated purposes. Below, I explain my reasons for my finding.

The first stated purpose on the Notice was the rental unit would be occupied by the landlord, the landlord's spouse or close family member. The Act does not define the word "occupy" or "occupied" and I have turned to the meaning provided by Black's Law Dictionary. "Occupy" is defined as: "to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession."

While the landlord's son did not move into the rental unit, or otherwise occupy the rental unit, I am satisfied the landlords themselves occupied the unit for at least six months between October 2013 and June 15, 2014 while the unit was vacant and undergoing renovations. I have found that the landlords were occupying the rental unit as they were in possession of the unit and it was not occupied by any other person during that time.

The second stated purpose on the Notice was that the rental unit would be repaired in manner that required vacant possession. Based upon the documentary evidence showing the extent of the renovations made and the landlord's undisputed submissions describing the scope of the work, I am satisfied the rental unit underwent a significant renovation and that it would be unreasonable to complete this scope of work while the tenants were residing in unit.

Further, I reject the tenants' argument that the landlords should have waited until their son's transfer was approved before making renovations. An owner of a property retains

the right to decide the scope and timing of renovations or improvements, as permitted by the applicable laws. Where a tenancy is in place the landlord is obligated to give a tenant at least two months of notice prior to the start of major renovations that require vacant possession and that was done in this case.

In light of all of the above, I find the landlords took steps to accomplish the stated purpose within a reasonable period of time after the tenancy ended and used the rental unit for the stated purpose for at least six months. Therefore, I find the tenants are not entitled to additional compensation under section 51(2) of the Act and I dismiss their Application.

Conclusion

The tenants' Application has been dismissed.

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: October 21, 2014

Residential Tenancy Branch

