



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC and O

Introduction

This hearing was convened in response to the Tenant's application for a monetary Order for money owed or compensation for damage or loss and for "other".

The male Tenant stated that sometime in August of 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to reply upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 09, 2014 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that she served a copy of the evidence package to the Tenant, via registered mail, sometime in December of 2014. The Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (Act)*, because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 01, 2013 and that the Tenant agreed to pay rent of \$1,200.00 by the first day of each month.

The Landlord and the Tenant agree that the Landlord personally served the Tenant with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, on November 25, 2013. The parties agree that the Notice declared that the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

The Landlord and the Tenant agree that the Two Month Notice to End Tenancy declared the Tenant must vacate the rental unit by January 31, 2014 and that the Tenant did vacate the rental unit by that date.

The male Tenant stated that he believes the Two Month Notice to End Tenancy was served because the Landlord wished to sell the rental unit. He stated that prior to service of the Notice to End Tenancy the Landlord's sister, who is a co-owner of the unit, told him they intended to sell the house.

The Landlord stated that her sister would not have told the Tenant of their decision to sell the house prior to service of the Two Month Notice to End Tenancy, as that decision was not made until after the rental unit was vacated.

The Landlord stated that she was living in the lower part of the residential complex during this tenancy. She stated that the Two Month Notice to End Tenancy was served as she wished to occupy the entire residential complex. She stated that she moved furniture and personal belongings into the rental unit sometime in February of 2014, after the rental unit was cleaned.

The Tenant does not know if the Landlord occupied the rental unit after the rental unit was vacated.

The Landlord stated that on August 06, 2014 the residential complex was placed on the market. She submitted a MLS listing and a multiple listing contract which corroborates this testimony.

The Landlord stated that she occupied the rental unit until January 04, 2015, at which time she entered into a contract to sell the residential complex, with a possession date of January 29, 2015.

The male Tenant stated that on July 27, 2014 he saw a sign advertising the rental unit for sale. He stated that he contacted the selling agent and that he received an email response, dated July 31, 2014, in which the real estate agent provided him with details of the home, including the price. A copy of the email was submitted in evidence. The Landlord stated that the person who sent the email dated July 31, 2014 works with her listing agent.

The Landlord stated that she understands that the for sale sign was posted on the property prior to the start date of the multiple listing contract because her realtor was going to be out of the country on the start date of the listing. She stated that although she discussed the details of the sale with her listing agent prior to August 06, 2014 and he knew the details of the sale, it was not placed on the market until August 06, 2014.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy, pursuant to section 49(3) of the *Residential Tenancy Act (Act)*, which required the Tenant to vacate the rental unit by January 31, 2014 and that the Notice declared the Landlord or a close family member of the Landlord intended, in good faith, to occupy the rental unit.

Section 51(2) of the *Act* stipulates that if 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 the rental unit is not used for that 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.

On the basis of the undisputed evidence, I find that the Landlord began occupying the rental unit in February of 2014 and that she occupied it until January 04, 2015. I therefore find that the Landlord did use the rental unit for the purpose stated in the Two Month Notice to End Tenancy within one month of the effective date of the Notice to End Tenancy and that the Landlord used the rental unit for that stated purpose for well over six months. I therefore find that the Tenant is not entitled to compensation pursuant to section 51(2) of the *Act*.

On the basis of the testimony of the Landlord, the multiple listing contract submitted in evidence, and the MLS listing, I find that the rental unit was officially placed on the real estate market on August 06, 2014.

The Landlord's decision to list the rental unit for sale while she was still occupying the rental unit is not relevant to my decision in these circumstances, as I am satisfied that she occupied the rental unit for over five months before she offered it for sale. I find it reasonable to offer the property for sale after occupying it for five months as it would be highly unlikely for a purchaser to require a seller to vacate property within less than one month of a property being offered for sale. That provided to be true in these circumstances, where the property was not sold for approximately five months.

In determining this matter I note that the legislation only requires a landlord to occupy the rental unit for a period of more than six months. The legislation does not prevent a landlord from contemplating a sale of the property while the property is being occupied.

On the basis of the undisputed testimony and the email submitted in evidence, dated July 31, 2014, I find that the real estate agent began advertising the rental unit sometime in July of 2014. This fact does not alter my decision that it was reasonable for the Landlord to offer the rental unit for sale after occupying it for five months, even if the realtor advertised it a few days prematurely.

Conclusion

The Application for Dispute resolution 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: February 26, 2015

Residential Tenancy Branch

