



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The tenant applies for the equivalent of two months' rent compensation provided for under s. 51 of the *Residential Tenancy Act* (the "*Act*") arguing that the respondent purchaser has not occupied the premises for at least six months within a reasonable time after the end of the tenancy.

Issue(s) to be Decided

On the relevant evidence presented at hearing, weight on the balance of probabilities, does s. 51 of the *Act* apply to the circumstances of this case?

Background and Evidence

The rental unit is a four bedroom house. The tenant lived there since 1991 until the spring of 2014, when she received a two month Notice to End Tenancy for "landlord use of property." The home had been sold and the purchaser, the respondent, had requested that the landlord give the tenant a two month Notice to End Tenancy because she intended to occupy the rental unit.

The tenant accepted the Notice, received the statutory compensation required with such a Notice and vacated the premises at the end of July 2014.

The tenant has returned to her old neighbourhood many times since then. She has observed that no one has been living in the home.

The respondent purchaser's agent Mr. L. confirms that neither the purchaser nor any close family member has physically moved into the premises.

The home is now for sale.

Analysis

Section 49(5) of the *Act* provides:

- (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;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenant did not apply to cancel the Notice given under this section. As a result, by operation of s. 49(9) (9), she is “conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.” Such a “conclusive” presumption leaves no room for the tenant to later challenge the validity of a Notice.

However, s. 51 provides for compensation if the purpose for which a two month Notice has been given is not carried out. It provides:

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.

(emphasis added)

The landlord's representative argues that the respondent purchaser did not move in because her plans were changed by the fact that after the purchase she discovered she was pregnant and the home therefore no longer suited her.

I find that because of the wording of s.51(2)(b), above, a landlord or purchaser's intention is not relevant to the question of whether or not the rental unit is "used for the stated purpose" within a reasonable time after the effective date of the Notice. The wording indicates that it is a question of fact alone whether or not the rental unit is "used for the stated purpose." It either is or it is not.

The essential question in my view is whether or not the respondent purchaser was "occupying" the rental unit after the effective date of the Notice, even though she did not physically move in. If it can be said that she was occupying the premises even without actually living in them, then she has satisfied the requirement of s.51(2)(b) and no compensation is warranted.

The tenant argues that because no one physically moved into the premises the purchaser did not therefor occupy the rental unit.

I find I cannot agree. The word "occupy" is not synonymous with the word "reside." It is of particular note that the word "reside," a word more indicative of the act of physically living in an abode, has been used elsewhere in the *Act*. For example, s. 88, dealing with service of documents, permits a document to be sent to a landlord or tenant at the address at which the person "resides."

It is presumed that the provisions of legislation are meant to work together as part of a functioning whole and to be internally consistent. It is presumed that the drafters of the legislation do not use two words to mean the same thing. By use of different words, a different meaning has been intended.

According to Black's Law Dictionary "occupy" means "hold in possession." It does not connote the requirement of residing in the premises. A person may "occupy" a rental unit without anyone actually living there so long as she possesses it to the exclusion of all others.

This rental unit has remained empty since the tenant vacated but the respondent purchaser has held it in possession to the exclusion of others. I find that she has been

occupying the premises within the meaning of s. 51 and so is in compliance with that section.

It follows that the tenant is not entitled to compensation under s. 51.

Conclusion

The tenant's application must be 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: May 12, 2015

Residential Tenancy Branch

