



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes

MNDC, FF

Introduction

This matter is the subject of a Director's Decision dated June 30, 2015, a subsequent successful Review application by the landlord granting a Review Hearing July 30, 2015, with consequent Adjournment of proceedings October 07, 2015 leading to the current hearing date.

The tenant's original application was for a monetary order representing compensation pursuant to section 51(2) of the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. The respondent is the purchaser of the property. Both parties acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amount claimed?

Should the original Decision of the Director be confirmed, varied or set aside?

Background and Evidence

The following from the original Decision remains relevant.

The rental unit is a one bedroom condominium apartment. The tenancy started in February 2000. The final rent was \$685.00 per month.

The tenancy ended on October 31, 2014 pursuant to a two month Notice to End Tenancy. The Notice was given pursuant to s. 49(5) of the Act claiming that the landlord had entered into an unconditional agreement for sale of the property and that the purchaser has stated in writing that she has a good faith intention to occupy the premises.

The tenant testifies that he received the equivalent of one month's rent as required by the Act when a landlord issues a two month Notice and that his landlord has returned the security deposit.

He says that since vacating the premises on November 1, 2014 he has returned, spoken to the building manager, whom he got to know over the fourteen years he lived there, and was informed that the purchaser had not moved into the property.

He says and files corroborating advertisements to show that since February 15, 2015, the purchaser has been advertising the property for sale.

It is undisputed that the tenant received a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 30, 2014 with an effective date of December 01, 2014 (automatically adjusted to November 30, 2014 in accordance with the Act).

The tenant claims the purchaser did not follow through on the stated purpose for ending the tenancy in accordance with Section 51(2) of the Act. The tenant claims the purchaser did not occupy the rental unit after taking possession of the unit, but rather renovated the unit and soon after listed the unit for sale in February 2015.

The purchaser testified her father occupied the rental unit upon arriving from Toronto on November 08, 2014, until February 27, 2015, when they then returned to Toronto. The purchaser provided flight information in support of their testimony indicating particulars for an individual with the same surname as the purchaser. The purchaser further testified that during their father's occupancy the unit was partially renovated and listed

for sale to purportedly “test the market”, but was subsequently withdrawn when the listing expired and the purchaser still owns the unit. The purchaser testified they have a home, and have never occupied the unit themselves and it has remained vacant since the end of February 2015 while undergoing periodic work.

Analysis

Section 51(2) of the *Act* states as follows,

- (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.

It must be known that **Section 49(5) of the Act** is the *only reason* available to a landlord to issue a valid 2 Month Notice to End for Landlord’s Use on behalf of a purchaser. The topic of renovations in this matter is irrelevant as it only applies to a landlord – not a purchaser.

Section 49(5) operates to allow the purchaser, *or a close family member* to occupy the rental unit. “Close family member” is defined at the outset of **Section 49** and it includes an individual’s father.

The purchaser testified their father occupied the rental unit for 3 ½ months since the tenant vacated, or 3 months after the effective date of the Notice – November 30, 2014. The purchaser’s evidence is that the balance of the time since its legal possession, the rental unit has remained unoccupied, with the effect that the purchaser (or close family member) has not occupied the premises for at least six months within a reasonable time after purchasing the property.

I accept the purchaser's evidence and on the basis of their evidence I find the tenant vacated the rental unit on the good faith intention described in the Notice to End. The purchaser did not follow through on the reason or purpose for ending the tenancy for at least six months within a reasonable time after purchasing the property and the tenant has therefore established an entitlement as prescribed by **Section 51(2)** of the Act.

Effectively, I find the Decision outcome rendered June 30, 2015 is the correct Decision in this matter, and **I confirm the original Decision and Order.**

Conclusion

The tenant's application is allowed. **The Decision and Order dated June 30, 2015 stand.**

This Decision is final and binding on both parties.

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 30, 2015

Residential Tenancy Branch

