Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, ff

Introduction
The tenants apply for monetary compensation related to an alleged improper ending of their tenancy by the landlord. The tenants further request that an administrative deterrent penalty be imposed upon the landlord.

The male tenant attended the hearing, and the landlord and her agent attended.

Issues to Be Decided
Is the tenant entitled to monetary compensation from the landlord?
Should the landlord be assessed a penalty?

Background and Evidence
The facts of this matter are summarized as follows:
This tenancy began August 15, 2005, with monthly rent at $1,100.00. A security deposit of $550.00 was paid, and was returned to the tenants following the ending of the tenancy. The monthly rent increased over time, and by the time the tenancy ended was $1,280.00. On or about October 20, 2014, the tenants were served with a Two Month Notice to End Tenancy by the landlord. The notice indicated that all conditions for a sale of the premises had been satisfied, and the purchaser had asked the landlord in writing to give this Notice because the purchaser or a close family member intended in good faith to occupy the premises. The tenancy was to end effective January 31, 2015, and the tenants moved out in accordance with the notice. The landlord did not require the tenants to pay any rent for the final two months of their tenancy.

In fact, no one moved into the home after the tenants moved out. It was demolished on February 27, 2015.

The male tenant alleges that a demolition cannot occur without a permit, and that permits take time to obtain. He contends the timing of the demotion indicates the demolition must have been pre-planned, and that the landlord knew that the demolition would occur. He contends the notice was not therefore given in good faith, and that the

tenancy was ended under false pretenses. It is argued that under these circumstances, the tenants should be restored financially to the circumstances they enjoyed prior to the Notice being given. The tenants alleges that their recovery as against the landlord should not be limited to the remedy contemplated under section 51(2) of the Residential Tenancy Act for a breach of section 49 (which is two months rent), but they should receive the sum of $17,400.00, which is the differential as between their current rent and their estimation as to the fair market value of their previous rental situation (in other words, although they were only paying the sum of $1,280.00, the tenant contend that a true fair market value of their previous tenancy was $3,000.00, since that is the sum they would have paid in rent for a comparable new rental home.

The landlord submits that the Two Month Notice ending the tenancy was given properly and was based upon the genuine understanding by the landlord that the purchaser intended in good faith to move into the home. Prior to giving the Two Month Notice to the tenants, the landlord had been specifically advised by the agent of the purchaser that the purchaser intended to occupy the premises. A written Addendum to the Contract of Purchase and Sale had been prepared to that effect by the purchaser's agent and provided to the landlord. That document was never signed by either the purchaser or the purchaser's agent, or by the landlord as seller, and it never became a formal contractual term of the sale agreement. (The purchaser's agent later wrote a letter dated June 9, 2015, however, confirming that this Addendum had been hand delivered to the landlord at the request of the purchasers). Although the Addendum remained unsigned, the landlord nevertheless accepted in good faith that the purchasers intended to reside in the premises, and on October 20, 2014 she served the tenants with the Two Month Notice to End Tenancy as requested by the purchaser's agent. The closing date of the sale of the landlord's property was February 2, 2015. The landlord learned from her conveyancing lawyer on January 30, 2015 that in fact the Contract of Purchase and Sale had been assigned by the purchaser to a third party. The landlord was advised that this was out of her control, and would not impact the closing of the sale.

Analysis

The first issue I consider is the manner in which the tenancy was ended. Section 49(5) of the Residential Tenancy Act permits a landlord to end the tenancy, if the landlord enters into an agreement in good faith to sell the rental unit, all conditions of the sale have been satisfied, and the purchaser asks the landlord in writing to give notice to the tenant upon the grounds that the purchaser or a close family member intends in good faith to occupy the rental unit. In this regard, my review of the various contractual documents between the original purchaser and the landlord confirm that a Contract of

Purchase and Sale was entered into in good faith, and that all subject clauses for that sale were eventually removed, and the agreement became binding upon the parties.

A remaining key issue, however, is whether the purchaser asked the landlord in writing to give the Two Month Notice. The landlord argues that the Addendum, although unsigned, is in writing and therefore when combined with the agent's verbal request that the Notice be given, was sufficient to meet the requirements of the section 49(5). The tenant contends that since the document is unsigned, it fails to meet the requirement of being a written request of the purchaser.

While the actually wording in section 49(5) does not actually specify that the written request to End the tenancy be signed by the purchaser, I agree with the tenant that the need for a signed request by the purchaser this is an appropriate and reasonable interpretation of the provision that the request be in writing. I note for example that section 59(3) of *The Law and Equity Act* in British Columbia says that "a contract respecting land or a disposition of land is not enforceable unless there is, in a writing signed by the party to be charged or by his agent, both an indication that it has been made and a reasonable indication of the subject matter or the party to be charged has done an act ... that indicates that a contract or disposition not inconsistent with that alleged has been made." This indicates that for the purposes of the sale of the subject property, the unsigned Addendum was not an enforceable provision of the agreement, as it had never been signed (even though it was ostensibly in writing).

I further note that when either a tenant or a landlord gives the other a notice to end a tenancy under the Residential Tenancy Act, section 52(a) requires that the notice must be signed. Given the potential significant ramifications of the writing notice contemplated in section 49(5), it is my view that the written request or the purchaser must also similarly be signed.

Finding that the Notice ending the tenancy in this case required a written (and signed) request by the purchaser, I therefore agree with the tenant that the Notice issued by the landlord failed to comply with this requirement. Had the tenants filed a dispute of the Notice on this basis, I would have ruled that the Notice be cancelled and the tenancy would have continued. No such application was ever made by the tenants, however, and once the 15 day limitation period to dispute the notice ended, pursuant to section 49.1(6)(a), the tenants were conclusively presumed to have accepted the ending of the tenancy, and were required to vacate the rental unit.

The tenants submit they are entitled to compensation pursuant to section 51(2)(b). That section permits a tenant to apply for compensation equal to double the monthly rent, if

the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. The compensation is payable by either the landlord or purchaser, as applicable under section 49.

An evaluation of this section simply requires that I consider the reasons provided in the Two Month Notice (i.e. the purchaser intends to occupy the premises) and determine if the premises for in fact used for that purpose for at least 6 months. Clearly this was not the case, as the rented home was demolished within a month of the tenants have vacated. As such the tenants are entitled to the compensation of double the monthly rent.

A further issue, however, is the question of whether the landlord or the purchaser is liable to the tenants for the compensation payable to them under section 51(2)(b). Had a signed, written notice been provided to the landlord to give notice to end the tenancy (the requirement discussed earlier as found in section 49(5)(c), I would have ruled that payment of this compensation was the purchaser's responsibility. However, under the circumstances of this case, and in particular as a result of the landlord having given the Notice to the tenant without having received the requisite request from the purchaser, I find that landlord is liable to pay the two month's compensation to the tenants. This sum amounts to $2,560.00. I note that this compensation is specifically mandated by the Residential Tenancy Act, and in a sense is a pre-determined calculation of the remedy available to the tenants.

I have considered whether the tenants are entitled to further compensatory damages from the landlord. I find no basis for the tenants' claim for differential of the rent they now pay, and the alleged fair market value of their previous rented home. For one thing, the tenants have not supported this claim with sufficient evidence to demonstrate the fair market value of their present premises, or to justify their assessment of the fair market value of their former rented premises. Further, if in fact the fair market rent of their previous rented home was $3,000.00 and not $1,280.00 (the actual rent they were paying), then the tenants have already benefitted in a tremendous way from this discrepancy.

More importantly, I find that although the landlord issued the Two Month Notice to the tenants without the basis of a signed notice from the purchaser, the landlord in this case genuinely accepted in good faith that the purchaser would reside in the premises, and was unaware at any material time of any intention of the purchaser to assign the contract, or any intention by the third party assignee's intention to demolish the home. Had the landlord not given any Notice to the tenants, yet sold the property, upon the closing of the Sale the third party owner could simply have ended the tenancy on the

grounds that the rental unit was going to be demolished (pursuant to section 49(6)(a). The effect to the tenants would have been only that their tenancy may have lasted an additional two or three months, and their apparent transitioning expenses would have been the same. Further, while the landlord failed in a technical requirement under the Act regarding the receipt of a written notice from the purchaser, she was generous to the tenants by offering them an extra month of rent at the end of the tenancy, and at no time has been proven to have acted in bad faith. I find no further order of compensation to be proven or warranted.

Similarly, I also find no basis upon which the landlord should be subjected to an administrative penalty under section 94.1 of the Act, as a “significant deterrent” as suggested by the tenants. This request is dismissed.

The tenants seek recovery of their filing fee. This is a discretionary remedy and as they are successful with a portion of their claim, I award recovery of half their filing fee (i.e. $50.00) from the landlord.

The total sum awarded to the tenants is $2,610.00.

Conclusion

The landlord must pay the sum of $2,610.00 to the tenants.

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: July 09, 2015

Residential Tenancy Branch