



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on March 30, 2015 seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for other reasons; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord, her Agent, and both Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The application listed one respondent Landlord and during the hearing evidence was submitted in response to the application from the Landlord and her Agent. Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa, except where the context indicates otherwise

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants met the burden of proof to be awarded a Monetary Order?

Background and Evidence

The undisputed evidence was the Tenants entered into a written month to month tenancy agreement that began on April 1, 2013. Rent was initially payable in the amount of \$1,100.00 and was increased to \$1,124.00 effective April 1, 2014. In March 2013 the Tenants paid \$550.00 as the security deposit.

On October 20, 2014 the Tenants were served a 2 Month Notice to end tenancy which listed an effective date of January 31, 2015 and indicated the following reason for ending the tenancy:

All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

[Reproduced as written]

The Tenants vacated the rental unit and ended their tenancy early on December 28, 2014. The Tenants confirmed that they had received compensation equal to more than one month's rent after being served the 2 Month Notice. They submitted that they had entered into a verbal agreement with the Landlord that they would receive two month's compensation so they did not pay rent for November or December 2014.

The Tenants stated that they did not dispute the validity of the 2 Month Notice as they decided to vacate the property and obtain the monetary compensation as indicated above.

The Tenants asserted that they are now entitled to the additional monetary compensation from their Landlord because the rental house was not used for the intended reasons as listed on the 2 Month Notice. They argued that the rental house was torn down and was not occupied by the purchaser T.C.

The Tenants stated that they brought this application against their Landlord because they have not been able to find T.C. who was the originally named purchaser. In addition to the foregoing, the Tenants argued that T.C. assigned the purchase to a different buyer before completion of the sale.

The Tenants submitted a monetary order worksheet into evidence listing a claim of \$24,471.81 which was comprised of the following: \$100.00 filing fee; \$10.62 for each of two land title searches (2 x \$10.62); \$11.27 for a history land title search; \$7,500.00 for losses allegedly incurred during their own purchase of a house; \$6,744.00 six month's rent free; \$3,362.10 moving expenses; and \$6,733.20 for the Notice allegedly being fraudulent.

The Landlords disputed the Tenants' claim for compensation and argued that the 2 Month Notice was issued in good faith. They agreed with the timeline and events as described by the Tenants regarding the offer of purchase and sale; the assignment of the sale; and their issuance of the 2 Month Notice.

The Landlords argued that at the time the 2 Month Notice was issued they had met the three requirements set out in the Act. All the conditions for the sale of the property had been satisfied; the Landlord had the purchaser's written request to have vacant possession; and the 2 Month Notice was issued in good faith.

The Landlords argued that at the time they served the 2 Month Notice they believed the contents of the purchase and sale agreement to be valid, which they were. It was not until the Tenants vacated the rental unit and ended their tenancy that the purchasers approached the Landlord's lawyer to assign the sale.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 49(5) of the *Act* stipulates in part that a landlord may end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and 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.

[My emphasis added by bold text]

Section 49(8) of the *Act* provides that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

Section 51(2) of the *Act* states in part, that in addition to the amount payable under subsection (1)[*tenant's compensation for receipt of 2 Month Notice*], 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.

[My emphasis added by bold text]

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence was on October 20, 2014 the Tenants were served a 2 Month Notice to end tenancy effective January 31, 2015. The Tenants chose not to dispute the Notice, received compensation for being issued the Notice pursuant to section 51(1) of the *Act*, and vacated the rental unit ending the tenancy early on December 28, 2014.

The issue before me was not to determine the validity of the 2 Month Notice. If the Tenants wished to dispute the Notice or seek monetary compensation for a notice that was allegedly issued under fraudulent circumstances the Tenants were required to dispute the Notice within the required 15 day period provided for under section 49(8) of the *Act*. Accordingly, any monetary amounts claimed by the Tenants pertaining to the effectiveness or validity of the Notice are dismissed, without leave to reapply.

In this case I do not accept the Tenant's submissions that the burden to pay compensation under section 51(2) of the *Act* falls upon the Landlord simply because the Tenants could not locate the purchaser T.C. or because the purchaser assigned the purchase agreement to someone else after their tenancy ended.

Rather, I interpret section 51(2) of the *Act*, which states "...the landlord, or the purchaser, as applicable under section 49 must pay the tenant..." to mean that in cases where the Notice was issued due to a landlord's request for the landlord's usage then the burden would fall upon the landlord. However; in circumstance when the Notice was issued on the request of the purchaser, the burden to pay compensation would fall upon the purchaser. I make this interpretation in part as it would be unconscionable to consider that a landlord would be responsible for or have control over decisions made by a purchaser after all conditions to a purchase or sale agreement were met.

Based on the above, I find the Tenants have submitted insufficient evidence to prove a claim against the respondent Landlord in this matter. Therefore, I dismiss the Tenants' application in its entirety.

Conclusion

The Tenants were not successful with their application and it was dismissed in its entirety, without leave to reapply.

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: September 10, 2015

Residential Tenancy Branch

