Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Park Lane Towers Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC

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.

The Tenant stated that on April 29, 2015 he personally delivered the Application for Dispute Resolution, the Notice of Hearing, and three pages of evidence he submitted with his Application for Dispute Resolution to the building manager. The Landlord stated that she received these documents from the building manager and they were accepted as evidence for these proceedings.

On September 21, 2015 the Landlord submitted 44 pages of evidence to the Residential Tenancy Branch. Legal Counsel stated that on September 18, 2015 these documents were posted at the service address provided by the Tenant. The Tenant stated that he located this evidence on September 23, 2015. As the Tenant received the evidence more than one week prior to the hearing, I find that this evidence was served in accordance with rule 3.15 of the Residential Tenancy Branch Rules of Procedure, and it was accepted as evidence for these proceedings.

At the hearing the Tenant stated that he believed the Landlord's evidence was not served in accordance with the Residential Tenancy Branch Rules of Procedure. He was asked if he needed an adjournment to provide him with more time to consider the Landlord's evidence and he stated that he was prepared to proceed.

On September 22, 2015 the Landlord submitted 3 documents which relate to service of the Landlord's evidence. Legal Counsel stated that these documents were not served to the Tenant. As the documents were not served to the Tenant they were not considered as evidence for these proceedings.

The parties in attendance at the hearing were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

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 August 01, 2011;
- at the end of the tenancy the Tenant was paying monthly rent of $986;
- the Landlord served the Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property;
- the Notice to End Tenancy declared that the Landlord was ending the tenancy because a family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member own, all the voting shares;
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by November 30, 2014; and
- the Tenant vacated the rental unit on November 30, 2014.

The Tenant is seeking compensation of $1,972.00 because the couple that he was told were going to move to the rental unit after he vacated did not move into the unit. He stated that he was told this couple wanted to move into the rental unit so they would be closer to the hospital. He stated that the couple did not move into the rental unit, although he does not know why.

The Landlord stated that:

- her aunt and uncle intended to move into the rental unit as her uncle was ill and the rental unit was closer to the medical facilities he needed to access;
- her aunt and uncle are shareholders of the company that owns the rental unit;
- after the Notice to End Tenancy was served her uncle had a stroke and other medical complications;
- her uncle spent approximately seven months in the hospital or a care facility, and therefore the couple did not move into the rental unit;
- as a result of the medical complications her uncle needed to attend a different medical facility, which was not close to the rental unit;
- her uncle's physician moved his office to a location further away from the rental unit; and
- as a result of her uncle's deteriorating health the new location of his medical facilities, it was no practical for him to move into the rental unit.

The Landlord submitted a letter from the her uncle's physician, who declared that the rental unit was convenient to the medical facilities he used prior to the medical complications he experienced in the latter portion of 2014; that he was in the hospital or a nursing home for more than six months; and that as a result of his changing medical needs the rental unit was no longer convenient to the medical facilities he needed to access.

The Tenant contends the rental unit was available for rent in January of 2015. In support of this submission he submitted a letter from an occupant of the residential complex who declared that

he asked the manager about “its availability” and was told that it was only available for a single person. Although it is not entirely clear in the letter, the Tenant stated that the author of the letter is referring to the rental unit that is the subject of these proceedings.

Legal Counsel for the Landlord stated that the author of the letter is currently involved with separate dispute resolution proceedings under the *Act* and his evidence should be approached with caution.

The Landlord stated that sometime in June of 2015 the Landlord decided to re-rent the rental unit; she believes the rental unit was re-rented on July 01, 2015; that the new occupants may have moved some personal property into the rental unit sometime in June; and that the occupants did not reside in the rental unit until July of 2015. The Tenant stated that he was told by an occupant of the residential complex that the new occupants moved some property into the rental unit sometime in June and that they moved their furniture into the unit in July.

The Landlord submitted a letter from the resident managers of the residential complex, dated September 18, 2015, in which they declare that:

- on December 01, 2014 the Landlord informed they the rental unit was being used by the owners and was not available for rent;
- they did not attempt to show the rental unit until they were advised, in June of 2015, that the unit was available for rent; and
- the unit was rented for July 01, 2015.

The Landlord submitted a letter from an occupant of the residential complex, dated September 17, 2015, in which she declares:

- sometime before Christmas of 2014 she observed a sign in from of the building advertising “1 small bedroom” and “1 bedroom”;
- she was shown two units, neither of which was the rental unit that is the subject of this dispute; and
- she rented one of the units.

The Landlord submitted a letter from an occupant of the residential complex, dated September 16, 2015, in which he declares that:

- on December 30, 2014 he was shown two suites in the residential complex, neither of which was the rental unit that is the subject of this dispute; and
- he rented one of the units.

The Tenant made no submissions regarding the aforementioned three letters.

Section 8.4 of the Residential Tenancy Branch Rules of Procedure stipulates that I may only accept evidence on the matters stated on the Application for Dispute Resolution. In his final submissions the Tenant repeatedly made submissions not related to this claim for compensation pursuant to section 51(2) of the *Act*, including the argument that the Notice to End Tenancy had not been served in good faith and that there were problems with the tenancy.

The Tenant was repeatedly advised that the issues he was raising in his final submission were not related to his claim for compensation pursuant to section 51(2) of the *Act* and that they could not be discussed at these proceedings. He repeatedly disregarded my directions to move on to

relevant issues and was eventually placed in “mute mode”, where he could hear the proceedings but could not be heard by the other participants.

The Tenant remained in “mute mode” while Legal Counsel for the Landlord was making his final submission. The Tenant exited the teleconference while Legal Counsel for the Landlord was making his final submissions, which is a time when the Tenant would not have been able to speak even if he was not in “mute mode”. As the Tenant exited the teleconference prior to Legal Counsel for the Landlord completing his final submission, I was unable to provide the Tenant with the opportunity to make any final, relevant submissions. The hearing was concluded approximately four minutes after the Tenant exited the teleconference.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord’s Use of Property, which declared that the tenancy was ending because a family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares.

Section 51(2)(a) of the *Act* stipulates that if 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, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The term “occupied” is not defined by the *Act*, however Black’s Law Dictionary defines it as “to hold or keep for use”. The term “occupied” does not require a party to reside in the premises. I find that the rental unit was “occupied” by an individual who owns shares in a family corporation until July 01, 2015, at which time it was rented to a third party.

In determining that it was “occupied” until that time I was heavily influenced by the testimony of the Landlord and the letter from the physician, which indicates the shareholder who intended to move into the rental unit was prevented from moving into the unit for medical reasons and subsequently did not move into the unit because it was no longer close to his medical facilities. Regardless of the fact that the shareholder did not move into the rental unit, I find that the rental unit remained vacant until July 01, 2015 and was being held for him in the event his medical condition and medical needs made it practical for him to move into the unit.

In determining that the rental unit remained vacant until July 01, 2015, I was heavily influenced by the testimony of the Landlord and the letter from the managers of the residential complex, dated September 18, 2015, which corroborates that testimony.

I was further influenced by the letters from occupants of the residential complex, dated September 16, 2015 and September 17, 2015, both of whom declare they were not shown the rental unit when they were considering moving into the rental unit in December of 2014. I find this evidence corroborates the Landlord’s submission that the rental unit was not available for rent at that time.

In determining that the rental unit remained vacant until July 01, 2015, I placed limited weight on the letter from an occupant of the residential complex that was submitted in evidence by the

Tenant. I placed limited weight on the letter, in part, because it is not entirely clear the author of the letter is referring to the rental unit that is the subject of these proceedings, although I find it reasonable to presume he is.

More importantly, I placed limited weight on the letter submitted by the Tenant because it is contradicted by the letter from the managers of the residential complex. In their letter the managers declare that they did not attempt to rent the rental unit that is the subject of this dispute prior to June of 2015.

I find it possible that both the managers and the author of the letter submitted in evidence by the Tenant is being truthful and that there was a simple miscommunication between the parties. I find it possible that the managers were referring to other vacant units in the residential complex when they told the author of the letter that the unit was only suitable for a single person.

As I have found that the rental unit was "occupied" by an individual who owns shares in a family corporation until July 01, 2015, which is more than six months since the end of the Tenant's tenancy, I find the Tenant is not entitled to compensation pursuant to section 51(2) of the *Act.*

Conclusion

The Tenant's application for a monetary Order is 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: October 03, 2015

Residential Tenancy Branch