



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The Application for Dispute Resolution filed by the tenants seeks the following:

- A monetary order pursuant to section 51(2) of the Residential Tenancy Act in the sum of \$3000 for the equivalent of double the monthly rent.
- An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on each of the respondents by mailing, by registered mail to where the respondents reside on September 17, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

LT originally rented the upstairs portion of the rental property commencing in 2011. On June 1, 2015 both tenants started to live in the downstairs portion of the rental unit. The rent was \$1500 per month payable in advance on the first day of each month.

At the end of November 2014 the tenants were given a two month Notice to End Tenancy that set the end of tenancy for January 31, 2015. The grounds set out in the Notice to End Tenancy were as follows: "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 close family member intends in good faith to occupy the rental unit."

The tenants vacated the rental unit on or about January 5, 2015 after giving the landlord a 10 day Notice.. They testified that the purchaser did not take steps toward the purpose for which the 2 month Notice to End Tenancy was given.

The tenants rely on the following:

- An e-mail from a neighbor RK that states "...And he still comes by several times per week! So we are not completely sure but the owner may have moved into the main floor suite last week. I say may as his car seems to be here overnight but I cant's say I see many lights on. An even though he may have moved in clearly the Renovations are not complete. The whole thin is quite weird...."
- An advertisement on Craigslist for a 2 bedroom suite on the top floor of the rental property.
- An e-mail dated October 22 from RK that states "Just an update for you. They are still building. Bill is coming around. The upstairs is rented (about 2 months or so) but the owner is still (sort of) living on the main floor. Very weird..."

The evidence of the respondent SO is as follows:

- He moved into the rental property shortly after he took possession in early February. He initially moved into the upstairs portion. However, he discovered the upstairs portion was not to his liking and he has now moved to the main floor and basement area.
- He has rented the upstairs portion. He estimated the tenants moved in the beginning of August or September.
- He has made and continues to make some significant renovations to the rental property.
- This is the only property which he owns. He has claimed the homeowner's grant for the property.
- The hydro is in his name.
- Part of the contract involving the purchase of the property involved the obligation of the seller (BS) to complete certain jobs which he continues to do.
- He is a very busy realtor and is not home during most days.

The evidence of the respondent BS was as follows:

- He is at the property every day or every other day completing renovation projects. He confirms the respondent SO moved into the property in February and continues to live there. SO is physically present on a daily basis.

Analysis:

Section 51(2) of the Residential Tenancy act provides as follows:

- "51(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.”

The applicants have the burden of proof to establish on a balance of probabilities that they are entitled to the claim sought. After hearing the disputed evidence of the parties I determined the tenants have failed to present sufficient evidence to establish the landlord has failed to comply with section 51(2) for the following reasons:

- The tenants were not able to provide first hand evidence that the landlord was not living in the rental unit.
- The e-mail provided by the tenants of the neighbor is uncertain and state that it may be the owner has moved into the main floor.
- The fact there is few lights on does not mean the landlord is not living in the rental unit.
- The respondent SO testified he has lived in the rental unit since early February and continues to live in it. He testified this is the only property that he owns and that he has claimed the homeowners grant for it. The tenants were given an opportunity to ask questions of SO but they stated they did not wish to do so.
- The respondent BS testified he is at the property every day or second day. He confirms that SO is living in the rental property.

As a result I determined the tenants failed to prove that the landlord failed to comply with section 51(2) of the Residential Tenancy Act. As a result I ordered that the application brought by the tenants be dismissed without leave to re-apply.

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: November 24, 2015

Residential Tenancy Branch

