



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 the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; any other compensation or remedy that may be appropriate under the *Act* and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's evidentiary package as well as the tenant's application for dispute resolution with notice of hearing by registered mail on or about July 24, 2015. The tenant clarified that his application is solely based on compensation pursuant to section 51(2) of the *Act* as well as recovery of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy ended when the tenant vacated after receipt of a 2 Month Notice to End Tenancy for Landlord's Use. The landlord's 2 Month Notice indicated that "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."

The tenant testified that, after residing in the rental unit for approximately 3 years, the residential premises was sold to a new owner. Before the sale, he was provided with the landlord's two month notice and before vacating the residence, he was compensated in accordance with the *Act*. The tenant provided email correspondence with the landlord and the landlord's agents responding to the tenant's request for information about the sale. In several emails, including one dated May 18, 2015 (corresponding with notice to end tenancy) and July 15, 2015 (after the

tenant had vacated the residence), the landlord and the landlord's agents confirmed that the new owner intends to move into the residence.

The tenant applied claiming against the "new" and current owner of the property. He testified that the owner is not residing in the rental unit. He testified, submitting a photograph of the residence with a "for sale" sign in front, that the current owner is selling the residence in contradiction of the original reason provided in the notice to end tenancy.

The respondent to this application provided sworn testimony that she is in fact residing in the rental unit. She acknowledged that a "for sale sign" had been placed briefly on the property but her sworn testimony is that the sign was merely put up to evaluate the home's current price. She testified that she currently lives in the residence, and that it was always her intention to live in the residence.

Analysis

Section 49 of the *Act* allows the end of a tenancy for landlord's use including when the property is sold and the new owner wishes to reside in the rental unit. The tenant relies on section 51(2) of the *Act* in his application.

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 tenant provided, as evidence that he is entitled to double his monthly rent pursuant to section 51(2); a photograph of the residential premises with a for sale sign in front and email correspondence with a variety of the landlord's agents regarding the Notice to End Tenancy. In the email correspondence submitted by the landlord, he received email responses confirming that the buyer of the residence intends to move into the home on May 18, 2015 and July 15, 2015.

In his application and his correspondence with the landlord's agents, the tenant refers to "bad faith" or a lack of good faith in ending the tenancy. The consideration of good faith, as described by the *Act* and the Policy Guidelines refers to its relevance to pre-move out application, or more specifically an application to cancel a notice to end tenancy for landlord's use.

There is no evidence to suggest that the landlord was not acting in good faith when the Notice to End Tenancy was issued. Section 51 (2) of the *Act* provides that if 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 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.

I find the testimony of the respondent/current owner in this matter credible. That testimony was consistent with the email correspondence between the tenant and several other landlord agents. It was her sworn testimony that she resides in the unit and the tenant provided nothing in evidence to contradict that portion of her testimony.

With respect to the “for sale” sign, the respondent provided a reasonable explanation for the sign. The tenant provided no indication of any actual activity towards sale or, again, any evidence that contradicts the reason given in the notice to end tenancy: that the new owner would reside in the premises.

I find that the tenant has not raised a doubt with respect to the current owner's living situation. I find that the respondent/current owner provided credible straight forward testimony.

Given that I accept the testimony of the landlord and that I find the tenant has not raised sufficient evidence or sufficient doubt as to the compliance with the notice to end tenancy and the *Act*, I dismiss the tenant's application in its entirety.

Conclusion

I dismiss the tenant's application 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: January 20, 2016

Residential Tenancy Branch

