



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, CNL, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary award. The hearing was conducted by conference call. The tenants and the landlord's agent called in and participated in the hearing. Although in the application the tenants requested an order cancelling an Notice to End Tenancy and an order that the landlord comply with the *Residential Tenancy Act*, the tenants confirmed that the tenancy ended March 31, 2015 and that they are seeking a monetary award and no other relief.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in Richmond. The tenancy began approximately 20 years ago. The landlord served the tenants with a two month Notice to End Tenancy for landlord's use. According to the tenants the notice was given because the landlords intended to occupy the rental unit. The tenants moved out pursuant to the Notice to End Tenancy on March 31, 2015. The monthly rent at the end of the tenancy was \$1,350.00.

On December 7, 2015 the tenants applied for dispute resolution to claim compensation pursuant to section 51 (2) of the *Residential Tenancy Act*. The tenants claimed that the landlords have not used the rental property for the purpose stated on the Notice to End Tenancy. They claimed that the house has remained empty and unoccupied since the tenants moved out. The tenants submitted a copy of an e-mail message from a resident living near the rental unit. The message was dated December 2, 2015. In it, the resident, Ms. K.M. said:

You are correct, there is no one living in your old place. I run by your place quite regularly and while they did paint and clean up the garden and add new fencing (there was a couple who appeared to have stayed there temporarily while this was going on) no one has moved in. No cars, garbage pick up etc...

The landlords submitted a written statement in response to the tenants' claim. The landlord said that his move back to live in the rental unit was delayed until July 2015 because he had heart surgery and his doctor advised him not to make a long flight until he was recovered. The landlord submitted a medical report from his cardiologist dated February 18, 2015. The report described a cardiac procedure performed on the landlord on February 17, 2015.

The landlord submitted copies of letters from two neighbours living next door to the rental unit. In one letter dated June 12, 2016 the neighbour commented that the landlords arrived from Hong Kong in July, 2015. She noted that they immediately started cleaning and improving the property. She said that she says hello to the landlords when she passes the house and sees them working around the property.

The landlord submitted a second letter from another neighbour who lives across the street from the rental property. In the letter dated February 20, 2016 the neighbour, B.C. said that the landlord returned from China July 15, 2015 and lived in the rental unit thereafter. He said that the landlord travelled to Hong Kong on September 15, 2015 and returned December 5, 2015. He said the landlord has continued to live in the rental unit since his return.

Analysis

Section 51 (1) of the *Residential Tenancy Act* provides that a tenant who receives a two month Notice to End Tenancy for landlord's use is entitled to receive a payment equivalent to the amount of one month's rent payable under the tenancy agreement. Section 51 (2) provides that:

- (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 tenants did not provide a copy of the Notice to End Tenancy served by the landlords, but there is no dispute that a two month Notice was given on the ground that the landlords intend to occupy the rental unit. The tenants contend that the landlords have not occupied the unit and it has remained vacant since they moved out on March 31, 2015.

The Notice to End Tenancy was given because the landlords intend to occupy the rental unit. The evidence established that the landlords did not return from Hong Kong until July 15, 2015 and then proceeded to clean up and renovate the property. The landlords stated that they have resided in the rental unit since July 15, 2015 and a neighbour said in a letter that the landlord resided in the unit since July 2015, save for a period from September to December, 2015 when he was in China.

I accept the landlords' statement and those provided by the landlord in preference to the e-mail submitted by the tenants because the statements were accompanied by corroborating documents and are consistent. I find that occupancy of the rental unit does not require full-time residence in the rental unit. The Notice to End Tenancy was effective March 31, 2015. The landlords occupied the rental unit 3 ½ months later. The delay was in part occasioned by the landlord's heart condition and treatment. I consider that the landlords occupied the rental unit within a reasonable time after the effective date of the Notice.

The landlords have not used the rental property for any purpose incompatible with the stated reason for the Notice to End Tenancy; the property has not been re-rented or sold and I have found that occupation by the landlord does not require the landlords to prove that they are full-time residents.

I find that the tenants have not established that the landlords have not used the rental unit for the purpose stated in the Notice within a reasonable period after the effective date of the Notice to End Tenancy. The tenants' application for a monetary award is therefore dismissed without leave to reapply.

Conclusion

The tenants' application has been 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: August 2, 2016

Residential Tenancy Branch

