



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 a monetary order in the sum of \$1958 for two months compensation.

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 served on the landlord by mailing by registered mail to where the landlord resides on April 5, 2016.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence

The tenancy began on May 1, 2005. The tenancy ended on February 1, 2016. The rent at the time the tenancy ended was \$979 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$375 at the start of the tenancy.

The landlord served a 2 month Notice to End Tenancy on the Tenant in late December 2015. It was not on an Ontario form. He subsequently served a two month Notice to End Tenancy dated December 29, 2015 and setting the end of tenancy for March 1, 2016. There is a dispute as to when the Notice was served. I determined nothing turns on the date the Notice was served. That two month Notice to End Tenancy as based on the following grounds:

- The landlord intends in good faith that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenant did not dispute the Notice. She gave the landlord a 10 day Notice that she was ending the tenancy on February 1, 2016. The tenant vacated the rental unit at that time. The landlord gave her a cheque for the return of the security deposit and the equivalent of one rent as provided under section 51(1) of the Act.

The Tenant submits she is entitled to the equivalent of two months rent on the basis that the landlord did not act in good faith. The relevant provisions of section 49 are as follows:

49.(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

....

(8) 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.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The tenant testified the landlord did not act in good faith based on the following testimony:

- The landlord has harassed her over the 10 year tenancy.
- In 2013 the landlord gave her a Notice of Rent Increase that demanded more than he was entitled to. She and another tenant disputed the Notice. The landlord withdrew the Notice shortly before the hearing.
- On occasion the landlord gave a Notice of Rent Increase that increased the rent earlier than the required 3 months.
- In 2015 the landlord gave notice he intended to do renovations. He subsequently did not do those renovations.
- He has made threats that have adversely affected her quiet enjoyment.
- The landlord singled her out to do the eviction.
- He used an Ontario form initially.
- The landlord never painted nor did the floors while she was in the rental unit.

The landlord disputes much of the tenants' evidence.

- He denies he has acted in bad faith or that he has harassed the Tenant.
- In 2015 he gave the tenants notice he was intending to renovate to give them time to move. However, the bank would not lend the money and he was not able to proceed with the proposed renovations.
- He denies that he failed to give time proper time with the Notices of Rent Increases. He testified that had the tenant set out she was going to raise this issue he would have included it in the materials he provided.
- He admits giving the Ontario form initially but testified he gave the British Columbia form on December 29, 2016.
- Upon receive of the tenant's 10 day notice and upon the tenant vacating her he returned the security deposit and a cheque for the equivalent of one month
- He sent out notices to all tenants in the year he was intending to renovate.
- He used the month of February to sand the floors and paint.
- His son moved into the rental unit on March 1, 2016 and continues to live there.
- His son is attending Langara College and the rental unit is located in close proximity. In all likelihood the son will be there for the next 4 years.
- The tenant never made a request to have the rental unit painted.
- He fixed any maintenance issues raised by the tenant.
- The landlord produced bills in the name of his son to corroborate his testimony that his son is living there.

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

- 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.

Analysis:

After carefully considering all of the issues I determined the tenant has failed to establish that she is entitled to the equivalent of 2 months rent for the following reasons:

- When the landlord serves a 2 month Notice to End Tenancy on a Tenant the Tenant has 15 days in which to dispute the Notice and dispute whether the landlord is acting in good faith. If the tenant fails to file such an application the Act provides that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The Act gives the tenant a benefit of the equivalent of one month rent once the Notice is served.
- In my view the tenant is not entitled to raise the “good faith” intention of the landlord for the purpose of obtaining monetary compensation once she has accepted the Notice. The Act has given her a benefit of the equivalent of one month Notice.
- Section 51(2) gives the Tenant the right to the equivalent of 2 months notice where the landlord failed to follow the to take steps to accomplish the stated purpose within a reasonable period of time after the effective date of the notice and the rental unit is not used for that stated purpose for at least 6 months within a reasonable period after the Notice. In this case there is no proof that the landlord failed to follow the notices:
 - The effective date of the Notice is March 1, 2016. The landlord’s son moved in on March 1, 2016.
 - The reason he moved to the rental unit was to be close to college he is attending. This is reasonable.
 - The landlord produced evidence in the form of bills to corroborate the landlord’s testimony that his son is living there.
 - The son has lived there since March 1, 2016 and continues to live there. The period of time is almost 6 months.
- As a result I determined the tenant has failed to prove she is entitled to the equivalent of two months rent under section 51(2).
- Further, I determined the tenant has failed to prove that the landlord has not acted in good faith.
 - The tenant alleged the landlord gave improper Notice of Rent Increase. The landlord disputes this. The tenant failed to provide evidence to corroborate this testimony and failed to prove this allegation.
 - I do not accept the submission the notice given by the landlord in 2015 that he hopes to renovate the rental property is evidence of bad faith. In my view it is more consistent with a landlord trying to give the tenants as much notice as possible.

- The tenant failed to prove that the landlord did not properly maintain the rental unit in a timely fashion.
- The tenant complained that the landlord did not paint or redo the floors. The tenant never asked. She testified she was content with the rental unit in its present condition. This is not evidence of bad faith.
- The tenant failed to present sufficient evidence to prove the landlord has targeted her or acted in bad faith.

As a result I ordered that the application of the Tenant 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: August 26, 2016

Residential Tenancy Branch