



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, O

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary award based on the landlord's failure to comply with the provisions of the Act regarding the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 51(2).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Are the tenants entitled to monetary award equivalent to two months' rent based on the landlord's failure to use the rental unit as stated in the landlord's 2 Month Notice?

Background and Evidence

This tenancy ended when the tenants vacated the rental unit February 28, 2016. The tenants had resided in the rental unit for three years with a rental amount of \$2330.00 payable on the first of each month. The landlords issued a 2 Month Notice to End Tenancy for Landlord's Use and the parties ultimately agreed that the tenants would vacate the rental unit. The tenants testified that the landlord return their security deposit at the end of the tenancy.

The tenants sought a monetary order in the amount of \$4660.00, the equivalent of two months' rent. They submitted a copy of the 2 Month Notice provided by the landlords that provided the following sole reason to end the tenancy:

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 tenants submitted that the landlord did not use or take steps to use the rental unit for the purpose stated in the 2 Month Notice. Tenant MS submitted that the tenants were entitled to the

equivalent of two months' rent from the landlords as the landlords had not used the rental unit for the stated purpose within the required amount of time.

Tenant IJ testified that he contacted a building manager regarding mail after the move-out and that he was advised that no one was residing in the rental unit as of June 2016. Tenant MS testified that she and her co-tenant continued to reside in the same neighbourhood and when walking past the rental unit, she noticed that it did not appear to be occupied. The tenants submitted documentary evidence showing text message correspondence between the parties regarding the end of tenancy and the reason for the end of tenancy.

The landlord's agent testified that the rental unit is occupied by the landlord's son and his family. He provided documentary evidence including; utility (internet and television) bills in the name of the landlord's son; household purchases by the landlord's son; invoice for painting the rental unit in the name of the landlord's son; the landlord's son's cellular phone bill with the rental unit as his residential address; and an indication of a move-in fee paid to the strata by the owner in March 2016. The landlord's agent provided his own sworn testimony that he has personal first hand knowledge that the landlord's son and his family have taken up occupancy in the rental unit.

The landlord's agent testified that the landlord's son and his family are currently out of the country. Tenant IJ argued that the landlord's son may visit and occasionally stay in the rental unit but that this is not a sufficient tenancy to end and replace her regular ongoing living arrangement.

Analysis

The tenants acknowledge in their testimony that the landlord issued a 2 Month Notice to End this tenancy in the proper form in the appropriate timeline and provided the appropriate (equivalent of 1 months' rent) compensation to the tenant. Pursuant to section 49(3), a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord's agent submitted that the notice was given in good faith. The tenant complied with the end to tenancy and vacated the rental unit prior to the required date (on February 28, 2016).

As of the end of the tenancy (when the tenants vacated the rental unit), the matter of whether the landlords acted in good faith is not the applicable standard to consider. However, section 51 of the *Act* provides further requirements of a landlord with respect to the issuance of a 2 Month Notice to End Tenancy:

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 tenants rely on section 51(2) submitting that the landlord neither took steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice (April 1, 2016) nor used the rental unit for the purpose stated within a reasonable period after the effective date of the notice. Further, the tenants submitted that they question that any current living arrangements meets the standards considered by section 49(3) of the Act.

I accept the landlord's submissions regarding the use of the rental unit. I accept his evidence that the owner (landlord) son resides in the rental unit with his family. I accept the testimony of the landlord's agent stating that the son resides in the rental unit. I note that the landlord agent's testimony is supported by the documentary evidence submitted. The documentary evidence shows sufficient proof that the owner/landlord's son is residing in the rental unit. I find that the landlord's timeline to move in his son and family of approximately 3 months from the scheduled end of tenancy is a reasonable period of time. I find that whether the son resides in the unit every day or travels for period of time is not a relevant consideration to this application: I find that he resides in and occupies the rental unit. Therefore, I dismiss tenants' application for a monetary recover pursuant to section 51 of the Act.

Conclusion

I dismiss the tenants' 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: September 13, 2016

Residential Tenancy Branch

