



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for tenant's compensation payable under section 51(2) of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Are the tenants entitled to compensation equivalent to double the monthly rent under section 51(2) of the Act?

Background and Evidence

The tenancy started in July 2013 and the tenants were required to pay rent of \$2,450.00 on the first day of every month. The tenancy ended on February 29, 2016 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 31, 2015 (the 2 Month Notice). The reason for ending the tenancy, as stated on the 2 Month Notice served to the tenants, was 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 tenants did not pay rent for February 2016 as permitted under section 51(1.1) of the Act.

It was undisputed that shortly after the tenancy ended the landlord repainted and installed new carpets in the rental unit and on March 8, 2016 the landlord listed the rental unit for sale. The unit was considered sold as of March 18, 2016 and the property was transferred to the new owners on April 22, 2016.

The tenants are seeking compensation equivalent to two month's rent, as provided under section 51(2), because the landlord did not use the property for the reason stated on the 2 Month Notice.

The landlord submitted that he should not have to pay the tenants the compensation they are seeking due to "extenuating circumstances". The landlord explained that he had intended to move into the rental unit when he issued the 2 Month Notice as he had entered into a sales contract for the condominium he was living in at that time. However, in February 2016 the landlord decided not to complete the sale of the condominium he was living in as he determined he had agreed to sell the condominium for much less than its market value due to alleged fraudulent misrepresentation on part of the purchaser. Since the landlord had already entered into a contract to purchase a house and had decided not to complete the sale of his condominium, the landlord determined that he had to sell the rental unit in order to come up with the funds for the house purchase.

The landlord was of the position that the compensation sought by the tenants is a "money grab" on part of the tenants based upon a technicality and that they would have likely received a 2 Month Notice when he sold the rental unit to the new owners.

After hearing the landlord's reasons for selling the rental unit, the tenants were not agreeable to waiving entitlement to compensation they are entitled to under the Act. The tenants explained that finding alternative accommodation was very difficult, costly and very stressful especially when the landlord denied their request for a short extension only to learn shortly thereafter that the landlord renovated and sold the property instead of moving in himself as he had indicated to them on a number of occasions. The landlord maintained that the tenant had two months of notice to move out which is why he denied their request for a short extension.

In addition to the compensation described above, the tenants requested recovery of moving costs and move-in strata fees paid to their new landlord. I dismissed these claims summarily as the tenants had not provided documentary evidence to support the amounts claimed and because the compensation they received under section 51(1) more than offset their moving costs. The tenants did not object to my decision and I did not seek a response from the landlord as to these claims.

Analysis

Where a tenant receives a 2 Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. First of which is compensation for receiving the 2 Month Notice provided under section 51(1) and this compensation is equivalent to one month's rent. Secondly, compensation may be payable to the tenant under section 51(2), in addition to compensation payable under section 51(1), where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice. Compensation under section 51(2) is intended to dissuade landlords from issuing a 2 Month Notice to end a tenancy for a reason not permitted under the Act.

The tenants received the compensation payable under section 51(1) and are seeking compensation pursuant to section 51(2) of the Act. It is important to note that there are no exemptions from the applicability of section 51 compensation. Accordingly, unless the tenant expressly waives entitlement to compensation, an award shall be made to the tenant where section 51 applies. Accordingly, the issue for me to determine is whether the tenants are entitled to additional compensation provided under section 51(2) of the Act.

Section 51(2) provides:

(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...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis underlined]

Section 49 provides for a variety of reasons a landlord may end a tenancy for landlord's use. Accordingly, I find the application of either paragraph (a) or (b) of section 51(2) depends on the reason given for ending the tenancy. To illustrate my reason for this finding: a landlord may end a tenancy for landlord's use where the unit is to be demolished and in such cases paragraph (b) would not apply and paragraph (a) would be most applicable.

In this case, the landlord indicated the reason for ending the tenancy was so that she or her spouse or a close family member would occupy the rental unit. So as to dissuade landlords from ending a tenancy for an ulterior motive and occupy the rental unit for a brief period of time before re-renting or listing the unit for sale, I find the application of (b) is most appropriate where the reason for ending the tenancy is where the landlord indicated the landlord or close family member would occupy the rental unit.

The landlord listed the rental unit for sale shortly after the tenancy ended and transferred the property to new owners on April 22, 2016 meaning he did not occupy it for at least six months after the tenancy ended. Accordingly, I find the criteria of section 51(2) have been met and the tenants are entitled to compensation equivalent to two month's rent, or \$4,900.00.

The Act does permit a landlord to issue a 2 Month Notice with anticipation of listing or selling the rental unit shortly after the tenancy ends which is what the landlord apparently intended when he decided not to sell his condominium in February 2016. Rather, section 49 of the Act permits a landlord to give a tenant a 2 Month Notice when a contract of purchase and sale becomes unconditional and the purchasers have requested in writing that the landlord give the tenants a 2 Month Notice because they intend to occupy the rental unit. The landlord pointed to this provision in his submissions that he could have issued a 2 Month Notice to the tenants at a later date; however, I find the landlord's submission is speculative and not a basis to exempt the landlord from the provisions of the Act that apply in the circumstances.

The landlord had a recourse when he decided to sell the rental unit rather than occupy the property for at least six months which was to seek the tenants' consent to withdraw the 2 Month Notice dated December 31, 2016 and then issue a 2 Month Notice at a later date as applicable. However, the landlord chose not to and required the tenants to vacate the rental unit February 29, 2016. As explained to the landlord during the hearing, many decisions have costs associated to them and in this case, the landlord made a series of decisions that have costs associated to them, including compensating the tenants for his failure to occupy the rental unit for at least six months after the

tenancy ended, and since tenants did not waive their entitlement to compensation I provide the tenants with an award of \$4,900.00 as requested by the tenants.

As the tenants claim was with merit I further award the tenants recovery of the \$100.00 filing fee from the landlord.

In light of all of the above, I provide the tenants with a Monetary Order in the total amount of \$5,000.00 to serve and enforce upon the landlord as necessary and appropriate.

Conclusion

The tenants are provided a Monetary Order in the amount of \$5,000.00 to serve and enforce upon the landlord.

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 09, 2016

Residential Tenancy Branch