



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, OLC, FF

Introduction

The tenants apply for a monetary award for return of a security deposit, doubled under s. 38 of the *Residential Tenancy Act* (the “*Act*”), for compensation for the equivalent of one month’s rent under s. 51(1) of the *Act* due to recipients of a two Month Notice to End Tenancy and the equivalent of double a month’s rent due to tenants under s. 51(2)(b) of the *Act* in the event a landlord does not use the rental unit for the stated purpose in a two month Notice for at least six months.

By the time of the hearing the deposit money had been repaid. It was repaid within the time prescribed by s. 38 and so the tenants’ claim for deposit money and a doubling of that amount was withdrawn.

It is the landlord Ms. A.B.’s position that the two month Notice in question was not given by her, the sole landlord, or by anyone acting on her behalf.

Both tenants and the landlord Mrs. A.B. attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the two month Notice a valid and effective Notice?

Background and Evidence

The rental unit is a five bedroom home. The tenancy started in June 2015 for a fixed term of one year to May 31, 2016. The written tenancy agreement states that at the end of the fixed term the tenants must vacate the property.

The monthly rent was \$1800.00, due on the first of each month, in advance.

The written tenancy agreement, signed by the two tenants and by Ms. A.B. shows that only Ms. A.B. is the landlord. Mr. S.B. is not mentioned in the agreement. Clause 17 of the agreement states that “[t]he tenants are to communicate if they have questions or concerns and to only accept correspondence, notice or requests from their landlord A.B. [full name redacted].”

On March 31, 2016 the tenants received a two month Notice to End Tenancy from the landlord’s husband Mr. S.B. The stated grounds for the Notice were that the rental unit would be occupied by the landlord or landlord’s spouse. At the same time Mr. S.B. gave them a letter addressed to “tenant” indicating the “we are going to place our property for sale.” The letter was signed by Mr. S.B. as “owner.”

In response, as tenants are entitled to do upon receipt of such a Notice, the tenants gave their own notice to end the tenancy even earlier. It is not clear when or how or to whom that notice was given. They vacated the premises on April 30.

It is not disputed that the rental unit was rented to others shortly after the tenants vacated and was not used for the landlord or a close family member on the landlord as the Notice said it would.

The tenant Mr. A.V. testifies that Mr. S.B. arrived on March 31 with the Notice and an It would appear that Mr. S.B. had the tenants write their own names on the Notice.

Mr. A.V. says that Mr. S.B. was known to him and that he knew the Mr. S.B. and Ms. A.B. were then involved in divorce proceedings.

Shortly after, the tenants were contacted by Ms. A.B. who was attempting to negotiate a renewal of the fixed term tenancy, set to end May 31. He says that Ms. A.B. was either disregarding or was unaware of the two month Notice. Mr. S.B. later told him to ignore Ms. A.B.

Ms. H.V. testified that she thought the two month Notice to be odd but that Mr. S.B. was afraid that the tenancy would roll over for another year unless the Notice was given. She says Mr. S.B. wanted back into the home even sooner than the end of May.

The landlord Ms. A.B. testified pointing out she is the only landlord under the tenancy agreement and that the tenants are to accept notice only from her. She says that during the tenancy the tenants dealt only with her, not Mr. S.B. and that Ms. H.V. did not know Mr. S.B. The tenants paid rent to her not Mr. S.B.

She says that Mr. S.B. had no authority to issue the two month Notice and that he was not acting as her agent. She says that on or around April 1 she called the tenants, learned of the Notice and told Mr. A.V. that Mr. S.B. was not her agent and could not give that Notice. She says that Mr. A.V. responded "too bad."

In response Ms. H.V. says has known Mr. S.B. for several years. She says she did not get a copy of the tenancy agreement.

Mr. A.V. says that he usually dealt with Mr. S.B. regarding renovations and plumbing issues. He confirms that Ms. A.B. made it clear on April 1 that the two month Notice was not authorized by her.

Ms. A.B. says that when the parties signed the tenancy agreement she made a copy of it and put it in their mail box. She says that Mr. S.B. did not do work around the rental unit and that the tenants called her for a plumber.

Analysis

It is not uncommon for the spouse of a landlord to become involved in the management of a rental unit and to be clothed with apparent authority to act on behalf of the landlord as her agent.

In this dispute I find that Mr. S.B. did not have the authority of the landlord to act as her agent, implicitly or otherwise, in giving the two month Notice and that the tenants were not entitled to assume that he did.

The tenancy agreement that the tenant's signed is clear; Ms. A.B. is the landlord. Only notices from her are valid notices.

The fact that the tenants did not remember this provision in the agreement they signed or perhaps had not even noticed it when they signed the tenancy agreement is not a defence. They are taken to know the contents of the written contracts they enter into.

It may be that Mr. S.B. misrepresented his authority to the tenants. They may pursue him for any damage they have suffered as a result, but that is a matter between the tenants and Mr. S.B. The landlord Ms. A.B. is not responsible for his actions and is not bound by the two month Notice to End Tenancy that he gave them.

Additionally, the Notice claims to be given by Mr. S.B. as the landlord, not on behalf of Ms. A.B. Mr. S.B. is not the tenants' landlord. The Notice is of no effect against Ms. A.B. for that reason.

Conclusion

The two month Notice to End Tenancy dated March 31, 2016 is of no effect against respondent landlord Ms. A.B. The tenants' application must be 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: November 16, 2016

Residential Tenancy Branch