



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RJ Designs Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, O

Introduction

This hearing dealt with an Application for Dispute Resolution with the applicants seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the applicants and legal counsel for the respondent.

Issue(s) to be Decided

The issues to be decided are whether the applicants are entitled to a monetary order for compensation, pursuant to Sections 49, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The applicant testified the tenancy began with the original owner of the property in February 2012 as a month to month tenancy for the monthly rent of \$1,850.00 due on the 1st of each month and a security deposit of \$925.00 had been paid.

The applicants provided into evidence a copy a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on February 15, 2016 with an effective vacancy date of May 1, 2016 citing that all conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. This notice was issued by the landlord (seller).

The applicant submits that as a result of that Notice they vacated the rental unit on April 3, 2016. The applicant submits that it came to their attention that the purchaser of the property sold the property effective June 4, 2016. The applicants seek compensation, in the amount of \$3,700.00, provided for in the *Act* for the landlord not using the property for the stated purpose when ending the tenancy for landlord's use.

The respondent has submitted into evidence the following relevant documents:

- A copy of 2 pages of a Contract of Purchase and Sale between the landlord (seller) and a third party signed by those parties on February 1, 2016 setting completion of the sale for May 9, 2016. Clause 5 entitled Possession states that the Buyer will have vacant possession of the property by 11:59 p.m. on May 10, 2016 or subject to the following existing tenancies, if any. I note that no existing tenancies are listed in the blank space allowed; and
- A copy of 2 pages of an Assignment of Contract of Purchase and Sale between the respondent (purchaser) and the third party noted above signed by these two parties on February 23, 2016 in which the third party assigned the Contract of Purchase and Sale between the landlord (seller) and the third party.

The respondent explained that on February 1, 2016 the landlord (seller) entered into a sales agreement with the third party and that on February 23, 2016 the third party agreed to assign the sales agreement to the respondent (purchaser). The respondent submits that they were not a party to the decision to or the delivery of the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The respondent submits that because they were not a party to the original Contract of Purchase and Sale dated February 1, 2016 and the Notice to End Tenancy for Landlord's Use was issued on February 15, 2016, prior to the assignment and their involvement they should not be held responsible for any compensation.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if, among other reasons, the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51(2) states that in addition, if steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable time after the effective date or 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 purchaser, must pay the tenant an amount that is the equivalent of double the amount of rent payable under the tenancy agreement.

This means that the obligations of the landlord transfer from the seller to the purchaser in relation to any compensation for not using the property for the reasons given in the Notice to End Tenancy.

While normally this would mean that the purchaser of a property would be required to pay the tenants compensation should the purchaser not use the property for the stated purpose, in the case before me I find I am not satisfied that the respondent purchaser should be held responsible for this payment.

I make this finding, in part, based on the original Contract of Purchase and Sale of the property. Clause 5 should identify that there was an existing tenancy that may impact the date of possession of the property. In addition, there is no evidence before me that all of the conditions of the sale had been met or the third party had requested, in writing, for the landlord to issue the Notice at all.

By virtue of the lack of evidence that the third party had requested the landlord (seller) to issue the Notice and the testimony of the respondent (purchaser) that they did not participate in the issuance of the Notice, I find there is no evidence that either potential purchaser had requested the landlord end the tenancy as part of the sale of the property.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety.

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: January 5, 2017

Residential Tenancy Branch