



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Duttons & Co. Real Estate Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

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Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has set out a claim that the landlord failed to comply with the reasons given on a two month Notice to end tenancy for landlords' use of the property issued on April 20, 2016.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant did not set out a monetary claim. When asked, the landlord did not understand that the tenants' application could result in compensation to the tenant, pursuant to section 51 of the Act. As non-compliance with the section 49 of the act can result in compensation to a tenant I determined that I would consider the facts related to the ending of this tenancy.

Issue(s) to be Decided

Has the landlord breached the Act by failing to occupy the rental unit as set out in a two month Notice to end tenancy for landlords' use of the property issued on April 20, 2016?

Background and Evidence

There was no dispute that the tenancy commenced in December 2011. Rent at the end of the tenancy was \$1,475.00 due on the first day of each month.

The landlords' agent issued a two month Notice to end tenancy for landlords' use of the property. The Notice provided a reason that the landlord or a close family member intended to occupy the rental unit. The Notice had an effective date of June 30, 2016. The tenant vacated the rental unit just prior to the effective date of the Notice.

Prior to vacating the tenant discovered the rental unit property had been listed for sale. A copy of the listing, posted on March 20, 2016, was supplied as evidence. At the time the tenant submitted this application on July 11, 2016 the tenant was not aware if the unit had been sold or if the landlord had occupied the rental unit.

The landlord confirmed that the unit was listed for sale in March 2016. The landlord said that he did check the market to see what price the property might bring. The landlord had sold his home on the lower-mainland and fully intended to reside in the unit. The rental unit was not sold and effective July 1, 2016 the landlord and his family moved into the rental unit. The landlord remains living in the home.

Analysis

The landlord issued a Notice to end tenancy, pursuant to section 49(3) of the Act, as the landlord or close family member intended to reside in the rental unit.

There is no dispute that the landlord did list the unit for sale prior to the time the Notice ending tenancy was issued on April 20, 2016.

From the evidence before me I find on the balance of probabilities that the landlord did occupy the rental unit. The tenant had no evidence to the contrary.

Section 51(2) of the Act 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, 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.

Therefore, as the landlord occupied the rental unit immediately following the effective date of the Notice ending tenancy I find that the reason given on the Notice has been accomplished. In the absence of evidence to the contrary I find that the landlord continues to reside in the rental unit. There is then no ground to support compensation pursuant to section 51(2) of the Act.

Therefore, I find that the application is dismissed.

I note that when completing the decision it became apparent the landlord had also submitted an application for dispute resolution. That file was not before me during the hearing and the matter was not raised by the landlord. I have reviewed that application. The landlord has applied requesting only "other." There is evidence attached to the landlords' application that appears to rebut the tenant's application. There is no other matter contained in the application that would require adjudication.

As the landlords' application was not raised during the hearing I find that the landlord has leave to reapply.

Conclusion

The tenants' application is dismissed.

The landlord has leave to reapply within the legislated time limit.

This decision is final and binding and 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 12, 2017

Residential Tenancy Branch