



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Easy Rent Real Estate Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were affirmed. Evidence was reviewed and 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

As part of the application made on July 18, 2016 the tenants named a real estate company who had advertised the unit for rent after the tenancy ended in April 2016. There was no evidence before me that party was served with Notice of this hearing.

On July 29, 2016 the tenants amended the application made on July 18, 2016. The tenants added a party (Z.M.) thought to have made an offer to purchase the rental unit at the time the Notice ending tenancy had been issued. The amendment indicated Z.M. was to be served via the real estate company named as the initial respondent. The agent for that respondent, B.M., attended the hearing and confirmed receipt of the hearing documents and 12 pages of evidence given with the amended application.

On January 13, 2017 the tenants amended the application to add a second respondent; the original two landlords (J.G. and A.G.) who had issued a two month Notice ending the tenancy effective May 31, 2016. That amendment was served to the party who had acted as agent for the landlords up until the tenants vacated in April 2016. That agent, N.J., attended the hearing.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$6,570.00 for damage or loss under the Act?

Background and Evidence

The tenants have applied seeking compensation pursuant to section 51 of the Act. On February 23, 2016 the tenants were issued a two month Notice for landlords' use of the property.

N.J. testified that a copy of the Contract of Purchase and Sale in her possession indicates that a party, Mr. M.V, and Ms. M.V. had made an offer of purchase that was to close May 30 and 31, 2016. The agent was informed that the subjects to sale were removed and the sale was completed. The Contract indicated that the purchasers wanted to physically occupy the rental unit. The two month Notice to end tenancy was then issued to the tenants.

The tenants vacated, with proper notice, prior to the May 31, 2016 effective date of the Notice ending tenancy.

In June 2016 the tenants discovered the unit advertised for rent by the real estate company linked to the purchaser, Z.M.

The tenants did not know who they should name as a respondent in their claim for compensation.

B.M. said his parent, Z.M. is an innocent party. They had the same real estate agent as the initial purchasers, who had asked for vacant possession. When B.M.'s parents viewed the unit it was vacant. If there had been tenants they would have maintained the tenancy. They purchased the rental unit immediately after the initial Contract of Purchase and Sale collapsed.

After hearing from the parties I determined that the tenants have yet to name all potentially affected parties. N.J. attended the hearing but is no longer agent for the landlord. B.M. states that his parents are innocent parties who played no hand in the Notice ending tenancy issued to the tenants.

The tenants have not served the landlords and served only the past agent, who acted on instructions of the landlord. The agent no longer has any contact with the landlords and cannot respond to what occurred after the tenants vacated. The agent was not employed by the landlord at the time the initial offer of purchase is said to have collapsed in May 2016. The purchasers who requested the Notice ending tenancy be issued, have not been served with Notice of this hearing; although the landlords' agent was able to provide their names. As a result, I am not convinced that all affected parties have been served.

Therefore, I find that the application must be dismissed with leave to reapply to allow service to the affected parties. If the tenants reapply an arbitrator may determine if the landlord issued the Notice ending tenancy, in good faith, on the instruction of a purchaser. It will also be for the tenants to prove who may be responsible for any loss they claim.

I have made no finding on the merits of the claim.

Conclusion

The application is dismissed with 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 31, 2017

Residential Tenancy Branch

