



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$2400
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on December 8, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began approximately 10 years ago. The tenancy ended on November 1, 2016 after the landlord served a 2 month Notice to End Tenancy on the Tenant on August 28, 2016. The rent at the time the tenancy ended was \$1200 per month payable in advance on the first day of each month. The tenant did not pay a security deposit.

The 2 month Notice to end Tenancy was based on the following grounds:

- All of the 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

The agent testified that the purchaser of the rental unit did not move into the rental unit as provided under section 51(2) of the Act and the rental unit has been advertised for double the rent the applicant was previously paying. The agent for the landlord did not dispute that evidence that the purchaser failed to move into the rental unit.

The agent for the landlord is a son of the landlord who is presently out of the country. He provided the following evidence:

- A letter from the landlord that she has been living in China for the past 15 years employed as a university professor. The rental property was built in 1910 and in need of considerable upgrading. She did not have the money to pay for the upgrades and therefore agreed to sell the house to another son PS. .
- The letter stated the house was sold to another son PS and TJW. At the time of the sale the house he told her that it was his intention to live in the house pending redevelopment. She had a reasonable and honest belief that this was his intention when the house was sold to him.
- A search from the Land Title Office indicating the landlord sold the property to PS (her son) and TJW. Completion took place on September 9, 2016.

The agent for the landlord submits the Tenant has brought a claim against the wrong party and he does not have a claim against the landlord. .

Section 51(2) of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (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.

Section 49(5) of the Act provides as follows:

49(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Analysis:

There is no dispute that the purchaser or close family member has not moved in as provided under section 51(2) of the Act.

I do not accept the submission of the tenant that the tenant could choose to bring the claim against the landlord or the purchaser. Section 51(2) provides that the “landlord, or purchaser, applicable under section 49, must pay the tenant that is the equivalent of double the rent payable. In my view the tenants would be limited to bring a claim against the purchaser had the provisions of section 49 been followed. However, in this case the landlord failed to present evidence that she followed the provisions of section 49(5) and in particular failed to give evidence that she was given notice in writing to end the tenancy by the purchaser. As a result I determined the landlord to pay to the Tenant the equivalent of 2 months rent.

I determined this interpretation is required as had the claim against the landlord been dismissed, the purchaser might raise a defense that he never gave the landlord notice in writing that he was moving in and thus he would not be responsible to pay the equivalent of 2 months rent.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2400 plus the sum of \$100 in respect of the filing fee paid for a total of \$2500.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: February 08, 2017

Residential Tenancy Branch