



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 \$2200
- 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 the address for service set out in the 2 month Notice to End Tenancy on December 9, 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 October 30, 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 \$1100 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 Tenant 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 rent at \$2350 more than double the rent the applicant was paying. Further, the purchaser was one of the sons of the landlord. 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 another son of the landlord. The landlord is presently out of the country. He provided the following evidence:

- He is acting as an agent for his mother who has been living in China for the past 15 years employed as a university professor.
- The rental property was sold from his mother to her son PS and TJW.

The agent for the landlord submits the Tenant has brought a claim against the wrong party and the tenant does not have a claim against the landlord. The claim should have been brought against the purchasers.

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 into the rental unit. .

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.” There is no evidence from the landlord that she was given written notice to end the tenancy by the purchaser. In my view where the landlord failed to follow the provisions of section 49(5) the tenant can bring a claim against the landlord or the new purchaser. To hold otherwise would force the tenant into a situation where the tenant is not permitted from claiming against her landlord and where the purchaser might argue that he/she never told the landlord to give written notice. As a result I ordered the landlord to pay to the Tenant the equivalent of 2 month’s rent or the sum of \$2200.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2200 plus the sum of \$100 in respect of the filing fee paid for a total of \$2300.

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 14, 2017

Residential Tenancy Branch

