



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a Notice to End Tenancy for Cause and for monetary compensation from the purchasers of the rental unit pursuant to section 51 of the *Residential Tenancy Act*.

The hearing was conducted by teleconference on March 21, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

At the outset of the hearing the Tenant advised that he had vacated the rental unit such that he did not require an Order cancelling the Notice.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation pursuant to section 51 of the *Residential Tenancy Act*?

Background and Evidence

Introduced in evidence by the Landlords was a copy of the residential tenancy agreement between the Tenant and the former landlords, L.B. and O.B. This document confirms this was a month to month tenancy beginning November 1, 2012.

The Tenant testified that he initially received a handwritten letter from his previous Landlord, O.B., indicating that the property was sold and the new owners (the Respondents in this application) wished to have their family move into the rental unit.

The Tenant stated that he informed O.B. that the handwritten letter was insufficient and that he needed to issue a proper notice to end tenancy in accordance with the *Residential Tenancy Act*. He confirmed that he was then personally served a 2 Month Notice to End Tenancy for Landlord's Use issued May 11, 2016 (the "Notice"). He was not able to testify as to the date he received the Notice, although he confirmed he did not apply to dispute the Notice.

The Tenant stated that he moved from the rental unit on July 31, 2016 and was provided his free month's rent as required by section 51 of the *Residential Tenancy Act*.

The Tenant stated that O.B. then told him that the purchasers wished to move in a friend of theirs who was going to pay more rent. The Tenant stated that he knew this was inappropriate but he did not say anything to O.B. or the purchasers.

The Tenant stated that he does not have evidence that the purchasers rented the property to a third party, although it is his suspicion that this has occurred.

L.A. testified on behalf of the purchasers. She confirmed that they were given possession of the rental property on June 30, 2016. She stated that the Tenant had vacated the rental unit by the time they took possession. She further confirmed that the rental property has been used by their family continuously since gaining possession and that it is not rented out to a third party.

The purchasers also provided written submissions wherein they confirm that they are a family of seven and have used the rental unit as part of their home since gaining possession. The purchasers also provided a copy of the floor plan of the home confirming their need for the bedrooms in the rental unit to accommodate their children. The purchasers also submitted proof that the Tenant received a refund of his final rent cheque as well as his security deposit on July 5, 2016.

In reply the Tenant stated that the person with whom he spoke at the Branch assured him that he need not submit any evidence in support of his claim as the Branch would investigate whether the purchasers had been renting the rental unit to third parties.

Analysis

The Tenant alleges the purchasers have not used the rental unit for the purpose stated on the Notice and he therefore seeks compensation pursuant to section 51 of the *Residential Tenancy Act* which reads as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove his claim.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation. I find the Tenant has failed to prove the purchasers have not used the rental unit for the purpose stated on the Notice. He conceded that he did not have any evidence and was

merely relying on an alleged conversation with his previous Landlord and his suspicion that the purchasers used the property for a different purpose.

I accept the testimony of L.A. that the rental unit has been used to accommodate their family of seven. I further accept her testimony that the rental unit has not been rented to a third party. Accordingly, I dismiss the tenant's claim for compensation pursuant to section 51(2) of the *Residential Tenancy Act*.

Conclusion

The Tenant vacated the rental unit and his application to cancel a notice to end tenancy for cause is no longer applicable.

The Tenant failed to prove his claim for compensation pursuant to section 51(2) of the *Act* and his application is dismissed.

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: March 21, 2017

Residential Tenancy Branch