



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for landlord's use of property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants each gave affirmed testimony. The landlord also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

The parties agree that evidence has been exchanged, and all evidentiary material provided by the parties has been reviewed and is considered in this Decision.

At the commencement of the hearing the tenants advised that they have vacated the rental unit and the applications for more time to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for landlord's use of property are withdrawn.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for moving expenses, differential in rent paid, and compensation for the landlord's failure to use the rental unit for the purpose set out in the 2 Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant (TJM) testified that this fixed term tenancy began on March 1, 2016 and expired on February 28, 2017, thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,775.00 per month was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$887.50 as well as a pet damage deposit in the amount of \$500.00, both of which have been returned in full to the tenants. The rental unit is a condominium within a strata complex, and a copy of the tenancy agreement has been provided.

The tenant further testified that the landlord named is the person who rent was paid to each month. The landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property by registered mail, which was sent on December 13, 2016 and a copy has been provided. It is dated December 13, 2016 and contains an effective date of vacancy of February 28, 2017. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent spouse or child, or the parent or child of that individual's spouse)."

After receiving the notice, the tenant called the landlord indicating that the tenants really wanted to stay, but the landlord said that the date was firm and assured the tenants that the owner would be occupying the rental unit, and wanted to see it. The owner arrived with another person whom the tenants were told is a co-owner and would be occupying the rental unit. However, that person didn't seem familiar with the rental unit at all. The landlord had also confirmed that the intention was for her to move in.

The tenants obtained a land title document, a copy of which has been provided, showing that the rental unit is owned by 2 people. One has a 1% share and the other has a 99% share, but the person who viewed the rental unit and has moved into it does not appear on the land title document as an owner.

The tenants have provided a Monetary Order Worksheet setting out the following claims:

- \$1,775.00 for compensation required under the *Act* for serving the 2 Month Notice to End Tenancy for Landlord's Use of Property;
- \$3,550.00 for double rent, given that the owner has not moved into the rental unit;
- \$2,250.00 for an increased rent differential;
- \$500.00 for moving expenses; and
- \$2,150.00 for a cancellation cost on the new rental unit.

The tenant testified that the landlord has repaid the \$1,775.00 claim for compensation to the tenants, and that portion of the claim is withdrawn.

The tenant testified that the tenants now pay \$2,150.00 per month in their new rental unit, and the claim of \$2,250.00 for an increased rent differential is based on having to sign a 6 month lease which is the shortest fixed term the tenants could find.

The tenant also testified that the tenants were intending to stay on a month-to-month basis until they could buy a house and having lost that flexibility will have to cancel the lease if they are able to take possession of a purchased home prior to the end of the fixed term of July 31, 2017. The cancellation fee will be \$2,150.00.

The tenants also claim recovery of the \$100.00 filing fee.

The landlord told the tenants that there is another document that shows a 50% share of ownership to the person who has moved into the rental unit, and the landlord has provided a copy for this hearing. The tenants have a copy of that Agreement which is dated January 5, 2010, and the tenant testified that it expired on January 31, 2015 which was before the tenancy even began. The tenant also testified that the landlord's summary document provided for this hearing refers to that document as an ownership document and proof of 50/50 ownership, but it doesn't appear to be registered anywhere. The landlord knew the Agreement was not relevant, and it's not. The landlord is a realtor company and should be held at a standard about knowing the relevant documents prior to issuing a notice to end the tenancy, but didn't. The tenants claim double the monthly rent, or \$3,550.00 and \$500.00 moving expenses.

The landlord testified that the landlord is an agent for the property management company hired by the owner to manage the property. Rent was paid to the brokerage on the 1st day of each month.

The landlord further testified that intention to use the rental unit for the landlord's home was made in good faith. The Agreement between the owner and the person who has moved into the rental unit was provided to the landlord by the owner as evidence for this hearing. It contains a clause under Section 3.1: "Ownership of Lands" showing the names of the co-owners and that each has a 50% share. It also contains an expiry date of January 31, 2015 which was not noticed by the landlord, although it was examined, and the landlord issued the notice to end the tenancy based on the Agreement, because one of the co-owners has moved into the rental unit, regardless of what the land title document shows.

The landlord's first witness (SD) testified that she is one of the co-owners mentioned in the land title document and in the January 5, 2010 Agreement. The property was purchased by the witness and the person who owns a 50% share according to the Agreement. However, that person, who currently resides in the rental unit, required her father to be on title because she was under age at the time the property was purchased. That person and the witness purchased the rental unit together because the witness could not afford it by herself, and the other person's father helped so that the other person would have an investment. Although the witness is on title for 99% of the shares, she does not own 99%.

The January 5, 2010 Agreement was drawn up by a lawyer and the witness was asked to provide such documentation for this hearing, and located this Agreement but did not notice an expiry date until the hearing commenced. There is another Agreement but the witness is not sure of an expiry date.

The witness also testified that the tenants had asked for documentation mentioning a law suit, and the witness refused believing it was none of the tenants' business.

The landlord's second witness (MS) testified that he is the managing broker for the property management company. The witness was asked by the tenant to provide information about ownership because they did a land title search and the brokerage company wanted to ensure the Agreement was valid. The witness did not notice the expiry date until this hearing. The person who has moved into the rental unit is the daughter of the person who is listed as having a 1% share on the land title document. The witness believes there is a 50/50 share according to the Agreement, which has not expired to the best of his knowledge, and submits that the same premise applies as tenancy agreements, that if not renewed and rent is collected the tenancy continues.

Analysis

The *Residential Tenancy Act* permits an owner who has a revisionary interest of 50% or more to end a tenancy for use of the rental unit.

If the tenants had disputed the 2 Month Notice to End Tenancy for Landlord's Use of Property, the onus would be on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include establishing the reason for issuing it. However, in this case, the tenants moved out of the rental unit prior to the hearing and withdrew the application for an order cancelling the notice to end the tenancy, and seek compensation from the landlord. That switches the onus to the tenants, to establish that the rental unit has not been used for the reason set out in the notice. Section 49 of the *Act* specifies the definition of a landlord:

49 (1) "landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest.

The question before me is whether or not the person who has moved into the rental unit has, or continues to have a 50% revisionary interest in the rental property which exceeds 3 years. The owner testified that such an agreement exists but has provided one that has expired and is not certain if any subsequent similar agreement has an expiry date. The owner also testified that the person listed as an owner in the land title document is the father of the person who holds the 50% share, but refused to provide a copy to the tenants saying it was none of their business.

I find that the tenants have done their due diligence by seeking the information to establish that the landlord has breached the *Act*, and by providing evidence showing that someone other than the person who has moved into the rental unit has a 1% share and another person holds a 99% share. There is no dispute that the person who has moved into the rental unit is not mentioned at all in the land title document. Therefore, I find that the tenants have established a claim for double the monthly rent, or \$3,550.00.

The tenants' application also includes a claim of \$2,250.00 for the difference in the amount of rent paid now and the amount of rent the tenants paid for this rental unit and would continue to be paying if the landlord had not issued the notice ending the tenancy. The tenant testified that the tenants looked for a place that had a short fixed term and the shortest fixed period they could find required a 6 month lease expiring on July 31, 2017 for rent in the amount of \$2,150.00 per month. The *Act* requires a party who makes a monetary claim against another party to do whatever is reasonable to mitigate any loss suffered. I am not satisfied that although the tenants sought a short fixed term, that the tenants sought a rental unit in the similar amount of rent payable. Therefore, I am not satisfied that the tenants have established mitigation and the claim of \$2,250.00 for the increased rent differential is dismissed.

Where a landlord gives a notice to end the tenancy for landlord's use of property, the landlord is required to provide compensation to the tenants in the equivalent of 1

month's rent, but not moving expenses. The tenants have received the equivalent of 1 month's rent from the landlord, and I dismiss the \$500.00 claim for moving expenses.

With respect to the tenants' claim of \$2,150.00 for cancellation costs of the new rental unit once the tenants purchase a home, which has not happened, I find the claim to be purely hypothetical, and the tenants have not suffered any loss. Therefore, that portion of the tenants' application is dismissed.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I hereby grant a monetary order in favour of the tenants as against the landlord in the amount of \$3,650.00.

Conclusion

For the reasons set out above, the tenants' application for more time than prescribed to dispute a notice to end the tenancy is withdrawn.

The tenants' application for an order cancelling a notice to end the tenancy for landlord's use of property is withdrawn.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,650.00.

This order is final and binding and may be enforced.

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 02, 2017

Residential Tenancy Branch

