



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC FF

Introduction

This hearing was convened in response to an Application pursuant to the *Residential Tenancy Act* (the Act) by the tenants seeking a Monetary Order and to recover the filing fee.

Both tenants and one of the respondents, DH, attended the hearing and were given opportunity to present relevant evidence and testimony in respect to their claim and to make relevant prior submission to the hearing and participate in the conference call hearing. The parties in attendance acknowledged receiving the evidence of the other.

The applicant tenants clarified their application sought compensation from the responsible party in respect to Section 51(2) of the Act and compensation from the landlord's pursuant to what they interpret as a breach of the fixed term tenancy agreement.

Issue(s) to be Decided

Have the tenants met the burden of proof to be awarded a Monetary Order?

Background and Evidence

There is no written tenancy agreement in this matter. The tenancy started in 2003 and ended August 01, 2016 pursuant to a 2 Month Notice to End (Notice to End) dated June 02, 2016 with an effective date of August 31, 2016. Rent of \$1,300.00 was payable each month until the tenancy ended.

In partial support of their original claim for compensation the tenants submitted a letter from the landlord (landlord's letter) dated in June 2012, which they claim is their tenancy

agreement and a contract, and which they interpret establishes a fixed term tenancy. The landlord's letter states:

Dear (tenants):

This letter is to inform you that we agreed not to increase the rent from \$1300 until May 2017. However, we have one condition; from now on you are responsible for buying or repairing appliances in the house. Thank-you for understanding.

-as written

The landlord's letter is signed by the landlord and initialled by the tenant.

The tenants were served the Notice to End indicating the following reason for ending the tenancy pursuant to Section 49(5) of the Act:

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 tenants stated that they did not dispute the validity of the Notice to End and vacated the rental unit and thereby ending the tenancy early on August 01, 2016.

The tenants asserted that they are now additionally seeking compensation because the rental unit was not used for the intended reasons as listed on the Notice to End. They argued the purchaser began to advertise the rental unit for rent at a higher price as provided in their submissions.

The tenants stated they brought this application against their former landlord DH because they were told to do so. They stated they also brought their action against respondent GD on information provided to them by an acquaintance they were the purchaser. The landlord DH and agent for GD provided that GD was not the purchaser and the landlord's document evidence respecting the purchase or sale of the rental unit does not identify GD as the purchaser. The tenant did not provide additional evidence proving their claim as to the purchaser or buyer of the property.

The landlord disputed the tenant's claim for compensation and argued the Notice to End was issued in good faith in accordance with the purchasers written instructions, which they submitted into evidence. The landlord confirmed they met the requirements set out in the Act and issued the notice in good faith.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On consideration of the evidence and on a balance of probabilities I find as follows.

I find that the landlord's letter of June 2012 does not establish the nature or term of the tenancy, which the tenants portray as a fixed term tenancy. **Section 1 Definitions** of the Act defines a **"fixed term tenancy"** as a tenancy under a tenancy agreement that specifies the date on which the tenancy *ends*. Even if I were to accept the landlord's letter supports the

existence of a tenancy agreement and I were to accept the landlord's letter as a contract of the parties, the 2012 letter is limited to stating that during such a tenancy the payable monthly rent would be \$1300.00 until May 2017. The landlord's letter does not state the date on which the tenancy ends.

I find the tenancy to be a month to month tenancy and that the tenancy legally ended in accordance with Section 44 of the Act when the tenants vacated pursuant to the landlord's Notice to End. I find the tenants have not established entitlement to compensation due to any breach of the parties' agreement and this portion of their application is dismissed.

Section 49(5) of the *Act* stipulates in part that a landlord may end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and 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.

Section 51(2) of the *Act* states in part, that in addition to the amount payable under Section 51(1)[*tenant's compensation for receipt of 2 Month Notice*], 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 - **emphasis added**.

The undisputed evidence in this matter is that the tenants were served a 2 Month Notice to End. The tenants chose not to dispute the Notice to End; and vacated the rental unit ending the tenancy on August 01, 2016. I do not accept the tenants' submissions the burden to pay compensation under section 51(2) of the *Act* falls upon their former landlord simply because the tenancy agreement was between the tenants and the landlord.

Rather, I find that Section 51(2) of the *Act*, in relevant part, states the landlord, **or the purchaser, as applicable under Section 49** must pay the tenant compensation. I find this to mean that in cases, such as this matter, where the Notice was issued by the landlord *on the request of the purchaser*, the burden to pay compensation would fall upon *the purchaser* if the unit was not used for the stated purpose purported by them. I find it would be unconscionable to consider a landlord responsible for, or have control over, decisions made by the purchaser upon the purchaser providing the landlord notice to end the tenancy as permitted by the Act. In this matter the landlord acted as requested and as they were obligated to do on the purchaser's written notice in accordance with the Act.

Based on all the above I find the tenants have submitted insufficient evidence to prove a claim against either of the respondents in this matter. As a result, I must dismiss the tenant's application entirely.

None the less it must be noted it remains available for the tenant to apply for dispute resolution naming a valid respondent / party.

Conclusion

The tenant's application is dismissed.

This Decision is final and binding on both 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: March 28, 2017

Residential Tenancy Branch