



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. One of the two named tenants appeared at the hearing and confirmed he was representing both tenants. The tenant testified that he served the hearing documents upon the landlord by way of registered mail sent on September 17, 2016. The tenant provided a registered mail tracking number and testified that the registered mail package was successfully delivered on September 24, 2016.

The landlord and an interpreter appeared for a portion of the hearing. I had received a written submission from the landlord and determined she had not served it upon the tenants and I informed the landlord that I could not consider the written submission but would permit the landlord to present her position orally during the hearing. The landlord's telephone line disconnected unexpectedly during the teleconference call on two occasions. Shortly after each disconnection a telephone re-connected to the teleconference call but I could not hear anything from the caller. I informed the caller of that and left the telephone line open to that the landlord could listen to the proceeding.

Issue(s) to be Decided

Are the tenants entitled to compensation equivalent to two months of rent because the landlord did not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*, as provided under section 51(2) of the Act?

Background and Evidence

The tenants were former owners of the subject property for several years. The tenants sold the property effective March 31, 2015 with a rent-back agreement. The tenants and the new owners entered into a tenancy agreement starting March 31, 2015 for a fixed term that expired November 30, 2015. Starting December 1, 2016 the parties entered into another fixed term tenancy agreement that was set to expire May 31, 2016 and continue on a month to month basis thereafter. The tenants were required to pay rent of \$2,600.00 on the first day of every month under the second tenancy agreement.

On March 31, 2016 the tenants were served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* with an effective date of May 31, 2016 ("2 Month Notice"). The reason for ending the tenancy, as indicated on the 2 Month Notice, is that:

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 did not file to dispute the 2 Month Notice and vacated the rental unit by May 31, 2016. The tenant explained that they did not dispute the 2 Month Notice as they had no basis to believe the purchasers would not occupy the rental unit.

The tenant testified that after the tenancy ended he drove by the property several times and in the months that followed nothing appeared to be happening at the rental unit with the exception of some renovations. There were no signs of anybody living in the rental unit or any furniture in the rental unit. In mid-August 2016 and again in September 2016 the tenant knocked on the door and observed workmen doing renovation work in the rental unit, including new flooring, paint and building a wall. The tenant also talked to former neighbours who confirmed nobody was living there.

The tenants filed their application September 13, 2016 and the tenant was of the view that four months since the tenancy ended is a reasonable amount of time for somebody to start occupying the rental unit. The tenant stated during the hearing stated that there are still no signs of anybody occupying the rental unit. Accordingly, the tenants seek compensation from the purchaser in the sum of \$5,200.00 (the equivalent of two month's rent) as provided under section 51(2) of the Act.

The tenant stated that he is aware that in previous decisions posted on the Residential Tenancy Branch website that Arbitrators rely often upon the definition of "occupy" that is found in Black's Law Dictionary. The tenant was of the position that to apply the Black's Law Dictionary meaning is patently unreasonable and would result in a perverse outcome as the rights and protections afforded tenants under the Act would be stripped from them.

Analysis

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation as provided under section 51 of the Act.

Under section 51(1) of the Act, a tenant entitled to receive the equivalent of one month of rent as compensation for receiving a 2 Month Notice. Should the landlord fail to fulfill the purpose stated on the 2 Month Notice the landlord must pay the tenant additional compensation in an amount equivalent to two months of rent under section 51(2) of the Act. Section 51(2) is the provision under the Act that the tenants rely upon in making their claims against the landlord.

Section 51(2) provides:

(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 ...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Under section 49 of the Act, there are multiple reasons for a landlord to end a tenancy for landlord's use of the property. Accordingly, I find the applicability of either paragraph 51(2)(a) or (b) will depend upon the stated purpose for ending the tenancy.

Where the tenancy has ended because the purchaser has indicated to the seller that the purchaser, or close family member of the purchaser, intends to occupy the rental unit, I find it reasonable to apply paragraph (b). I find paragraph (b) is most beneficial to tenants as to apply paragraph (a) would permit a landlord to occupy the rental unit for a very brief period of time to fulfill the stated purpose whereas paragraph (b) requires the purchaser to occupy the rental unit for at least six months. Accordingly, I must be satisfied that the purchaser, or close family member of the purchaser did not occupy the rental unit for at least six months beginning within a reasonable amount of time after the tenancy ended in order to grant the tenants' request for compensation.

It is important to point out that the purchaser or close family member of the purchaser were to "occupy" the rental unit after the tenancy ended and that the relevant portions of the Act does not use the word "reside", "live in", or "use". In interpreting statutes, meaning must be given to the words actually used in the legislation and not given the meaning of other words. As for the meaning of "occupy", the Act does not define the word "occupy" or "occupied". Black's Law Dictionary defines "occupy" as: "to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession."

In this case, I have been provided unopposed evidence that there appears to be nobody living in the rental unit but that some renovations have been taking place since the tenancy ended. Based on the legal definition of "occupy" I find there is insufficient evidence to indicate the rental unit is has been occupied by any person other than the purchaser. In other words, I was not presented any evidence to suggest the rental unit was re-rented or that possession was given to anybody else.

In making my decision I have considered the tenant's argument that the legal definition should not be applied but I have ultimately rejected his arguments. While I accept that the Act provides several rights and protections to tenants the Act also gives rights to landlords and a mechanism for an owner of a property to end a tenancy for the landlord's own use of the property. I am of the view that in interpreting statutes it is within reason to give the words in the statute their legal meaning and I have done so in this case. Considering there is no evidence to suggest the purchaser re-rented the unit or otherwise gave possession of the unit to anybody else while the unit was undergoing renovations I find no basis under the Act to order the purchaser to compensate the tenants. Therefore, I find I am unsatisfied that the tenants are entitled to compensation under section 51(2) and I dismiss their claim for such against the purchaser of the property.

Conclusion

The tenants' application has been 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 30, 2017

Residential Tenancy Branch