



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rainbow Apex Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC and FF

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which they applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenants submit that on September 28, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 8 pages of evidence that were submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. Canada Post documentation was submitted that corroborates this submission.

The Tenants submit the package was sent to the service address noted on the Application, which is where they typically mailed their rent cheques. The Tenants submit that their package was returned to them by Canada Post on October 24, 2016.

In the absence of evidence to the contrary, I find that the aforementioned documents have been served to the Landlord in accordance with section 89 of the *Act*; however the Landlord was not represented at the hearing.

Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Tenants submit that:

- the tenancy began on February 14, 2006;
- on February 24, 2014 the Landlord served them with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that they must vacate the rental unit by November 30, 2014;

- the Notice to End Tenancy declared that the Landlord was ending the tenancy because the landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant and a family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares;
- when they were served with the Notice to End Tenancy they were told the owner's daughter would be moving into the rental unit;
- the rental unit was vacated on October 20, 2014;
- they located an internet posting that advertised the rental unit for rent, which was posted on June 28, 2015;
- they believe the rental unit was vacant between the end of the tenancy and the date this ad was posted; and
- they believe the unit was re-rented in July of 2015.

Analysis

On the basis of the undisputed evidence I find that the Tenants were served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, which required them to vacate the rental unit by November 30, 2014, and that the unit was vacated by October 20, 2014.

The reason for ending the tenancy is not entirely clear, as the Notice declared that the tenancy was ending because the landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant and a family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares. I note that the two reasons are not mutually exclusive.

On the basis of the testimony provided at the hearing, I find that the Tenants were told that the owner's daughter would be moving into the rental unit. I therefore find that the reason cited on the Notice to End Tenancy should have been that a family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares.

Section 49(4) of the *Act* allows a landlord that is a family corporation to end a tenancy if 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. This would include a daughter of the person who owns the corporation.

Black's Law Free Online Legal Dictionary (2nd ed) defines "occupy" as: to hold in possession; to hold or keep for use. The term "occupy" in section 49(4) of the *Act* does not, in my view, necessarily require that a person reside in the rental unit. I find that a landlord has the right to end the tenancy, pursuant to section 49(4) of the *Act*, if a person owning voting shares in the corporation, or a close family member of that person, simply wishes to use the property for storage or other personal reasons.

Section 51(2)(a) of the *Act* stipulates that if 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, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the Tenants have submitted insufficient evidence to establish that a close family member did not take steps to occupy the rental unit within a reasonable period after the effective date of the notice. Although I accept that nobody moved into the rental unit soon after the tenancy ended, I find it entirely possible that a daughter or other close family member was using the property for storage or other personal/business reasons. I therefore cannot conclude that the Landlord must pay the Tenants compensation pursuant to section 51(2)(a) of the *Act*.

Section 51(2)(b) of the *Act* stipulates that if 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. Although I accept that the Landlord attempted to rent the rental unit on June 28, 2015, this was more than 8 months after the tenancy ended. As there is insufficient evidence to establish that the rental unit was not used by a daughter or other close family member for personal/business reasons for at least 6 months, I cannot conclude that the Landlord must pay the Tenants compensation pursuant to section 51(2)(b) of the *Act*.

I find that the Tenants have failed to establish the merits of their Application for Dispute Resolution and I dismiss their claim to recover the fee for filing this Application.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 01, 2017

Residential Tenancy Branch