



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the Tenants' Application for Dispute Resolution (the "Application") filed on December 1, 2016 for the following issues: for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), the regulation or tenancy agreement; for the Landlords to comply with the Act, regulation or tenancy agreement; and to recover the filing fee from the Landlords.

Both Tenants, one of the Landlords, and the Landlord's legal counsel appeared for the hearing. The Landlord and the Tenants provided affirmed testimony and legal counsel for the Landlord made submissions and arguments for the Landlord.

The Landlord confirmed receipt of the Tenants' Application along with the Tenants' accompanying documentary evidence which was served to the Landlords in December 2016 by registered mail.

The Landlord testified that he had provided documentary evidence on the morning of this hearing by email both to the Residential Tenancy Branch and to the Tenants. The Tenants confirmed receipt of the Landlord's evidence but stated that they did not have sufficient time to consider and respond to the evidence. The Tenants objected to the Landlord's evidence being allowed in this hearing.

The Landlord was asked why he had submitted documentary evidence so late prior to this hearing. The Landlord stated that he did not intend to serve any evidence because the Tenants bear the burden to prove the claim. However, he submitted the late evidence to bolster his case. The Landlord stated that he was not aware of any time limit he had for submitting evidence. Legal counsel requested that the hearing be adjourned as the evidence the Landlord was seeking to rely on was critical to his case and that the Landlord had only retained him one day prior to the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules”) provide for strict time limits on the exchange and service of evidence prior to the hearing. Rule 3.15 states that a respondent must provide the applicant and the Residential Tenancy Branch with their evidence seven days prior to the hearing.

In this case, the Landlord failed to adhere to this time limit. The Landlord was served with the Application in December 2016 and therefore, I find the Landlord had sufficient time to serve and provide this evidence in a timely and expeditious manner. In addition, the Landlord had no barrier preventing him from retaining legal counsel well before this hearing in order to prepare for it.

The Landlord argued that he was not aware of any time limits for the service of evidence. In this respect, I refer the Landlord to the Notice of Dispute Resolution Hearing document which he used to dial into this hearing. This document provides information for the service of evidence and explains deadlines are critical. The attached fact sheet explains in detail the time limits for the service of evidence. Therefore, I find the Landlord failed to serve his documentary evidence diligently pursuant to the time limits set by the Rules. As a result, I denied the request for adjournment and the hearing continued without consideration of the Landlord’s documentary evidence. However, I did not prevent the Landlord from providing that evidence as oral testimony.

Issue(s) to be Decided

- Did the Landlord use the rental unit for the reason given to end the tenancy?
- Are the Tenants entitled to moving costs?

Background and Evidence

The parties agreed that this oral tenancy between the Tenants and the Landlords started on December 19, 2013 for the upstairs portion of the residential home on a month to month basis. Rent was payable by the Tenants in the amount of \$2,200.00 on the first day of each month.

The parties agreed that the tenancy ended when the Tenants vacated the rental unit on March 7, 2016 after being served with a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”). The 2 Month Notice was served on January 2, 2016 and shows a vacancy date of March 1, 2016.

The reason for ending the tenancy indicated on the 2 Month Notice was that the rental unit will be occupied by the Landlord. The Landlords also attached a letter with the 2

Month Notice which stated that the Landlord was flexible with the move out date and that the primary purpose of the 2 Month Notice was for the Landlord and his family. The attached letter also states that during the notice period, the Landlord will have access to the rental unit for surveying and planning purposes and that no alterations, construction or deconstruction would be taking place during that time.

The female Tenant stated that they were seeking moving costs in the amount of \$1,327.39 because the 2 Month Notice was issued in bad faith. In addition, the Tenant seek two months of rent because the Landlord is alleged to have not used the rental unit for the use indicated on the notice within a reasonable time period after the tenancy had ended. The Tenants confirmed that they had received their one month compensation payable to them under the 2 Month Notice.

The male Tenant argued that the Landlord did not move into the rental unit and four months later the Landlord had installed a new roof and gutted the home down to its stud walls. The Tenants both stated that the Landlord did not have any permits to undertake this work and none have still been issued by the city. The female Tenant stated that no one ever occupied their upper portion of the home which was the rental unit, and the city has now issued a stop work order on the property because the Landlord never got a permit to do the major renovation work he had undertaken.

The Tenants both testified that the Landlord had informed them that he was going to be moving into the rental unit with his family and that the only change he was intending to make was to put in a stair case to the basement. Instead, the Landlord tore up the rental unit and disposed of the expensive granite and appliances within.

The Landlord explained that he was the son of the Co-Landlord named on the Application and that prior to the 2 Month Notice being served, he had agreed to purchase the rental home from his father so that he could then move into it with his family. The Landlord explained that the use of the property had been recently changed from multi-use to single family dwelling status. The Landlord testified that this was the main motivation and intention for ending the tenancy and that it was not for undertaking major renovations or repairs because at that time he was not aware of the extent of renovations that were required.

The Landlord testified that he wanted to restore the rental home to its former character so that he and his family could enjoy it. The Landlord testified that the Tenants asked if they could stay during any renovations he may be doing, but he informed them that during this time there may not be any services for them and that the tenancy had to end.

The Landlord testified that it was only when the Tenants vacated the rental unit and he took possession of it, did he realise the extent of the work he needed to undertake. The Landlord explained that he moved into the basement suite at the end of March 2016 and the upstairs portion was then used as an office from where he planned the renovation works that were required throughout the rental home with his contractors and planning team.

The Landlord explained that after he had started all of the work he wanted to make the rental unit suitable to live in by him and his family. However, the city imposed a stop work order on the property because he had not obtained the required permits for the work that was being done.

The Landlord explained that he moved out of the basement suite back into his father's home while the permits are now being obtained and this is the reason why the rental home has remained unoccupied since that time to the date of this hearing. The Landlord submitted that the rental home remains his principal residence which he has not sold or re-rented at any point. The Landlord testified that he had not disposed of the appliances as testified by the Tenants but these had been placed into storage.

The male Tenant rebutted the Landlord's evidence that he had occupied the basement portion of the rental home. The male Tenant stated that on their daily walks which take them past the rental home, they saw no lights on in the basement at any time. Legal counsel rebutted stating this was new evidence which could not be relied upon.

Analysis

I first turn my mind to the Tenants' Application for moving costs on the basis that the Landlords had issued the 2 Month Notice in bad faith. The issue of bad faith can only be dealt with and remedied if a tenant applies to dispute a 2 Month Notice within 15 days of being served with it.

In this case, the Tenants did not dispute the 2 Month Notice in order to argue bad faith intention. The compensation provided to the Tenants under the 2 Month Notice and that which is payable under Section 51(1) of the Act, is intended to compensate the Tenants for costs such as moving expenses. The Tenants confirmed receipt of this money and the tenancy was ended properly in accordance with the Act. Therefore, I find there is no basis for the Tenants to be awarded the moving costs claimed. Accordingly, I dismiss this portion of the Tenants' monetary claim.

However, Section 51(2) of the Act states:

51 (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.

[Reproduced as written]

When a tenant applies for relief under this section of the Act, the tenant bears the burden to prove the claim. In this case, I find the Tenants have failed to provide sufficient evidence to show the Landlord did not move into the basement portion of the rental home after the tenancy ended. I find the Tenants' disputed evidence regarding the lack of lights in the basement suite is not a determining factor in whether or not the rental home was occupied. It might be a factor in determining whether or not the home was being lived in, but residing in a property and occupying the property are two different legal scenarios.

I accept the Landlord's evidence that he moved into the basement portion of the rental home at the end of the March 2016 after the Tenants vacated on March 7, 2016. While the Landlord occupied the basement portion, which did not form part of the rental unit, I accept that the purpose of moving into this area of the home was to then occupy the entire home as a single family dwelling once the renovation work was completed.

I make this finding on the basis that "Occupy" is defined in Black's Law Dictionary as "To take or enter upon possession of, to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession". I accept the Landlord did occupy the rental unit by taking control and possession of it as an office work area to undertake renovation work.

I find the Landlord still continues to be in control and possession of the rental unit and has not used the property for an ulterior reason, such as re-rental or sale, that I could consider as being contrary to the reason provided on the 2 Month Notice.

I find the legislation under Section 51(2) contemplates and seeks to provide relief to tenants who have had their tenancy ended after which the landlord then fails to follow through for that very reason.

In this case, I find the Landlord took steps following the ending of the tenancy to occupy the rental unit and continues to retain possession and control of the rental unit to this date with the goal of occupying it for his own and his family use. The Landlord has not re-rented or sold the property and continues to occupy the property. As explained above there is a legal distinction between actually living in a property and simply having occupation of the property.

I find the Tenants have failed to meet the burden to prove that the Landlord did not use the property for the use on the 2 Month Notice in a reasonable period and that compensation under Section 51(2) is warranted. Therefore, I also deny this portion of the Tenants' claim.

Conclusion

The Tenants have failed to meet the burden to prove the Application. As a result, I dismiss the Tenants' Application without leave to re-apply. 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: June 1, 2017

Residential Tenancy Branch