



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC,

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$960.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on March 14, 2017.

The landlord testified she faxed some documents to the Branch on July 31, 2017. Those documents have not reached the file. She testified it included a request from her lawyer to give the appropriate notices to the tenants in the rental property. It also included communication from her lawyer to changing the closing date from October 18, 2017 to October 31, 2017. She did not provide the tenant with correspondence from her lawyer. The landlord acknowledged that she did not include a request in writing from the purchaser that the 2 month Notice to End Tenancy be given. It does not appear that she has this document.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence

The tenant testified he entered into a month to month tenancy in writing commencing July 1, 2016. The rent was \$480 per month payable on the first day of each month. The tenant paid a security deposit of \$240. On August 31, 2017 the landlord served a 2 month Notice to End Tenancy on the Tenant that set the end of tenancy for October 31, 2017. The grounds set out

in the Notice state “All conditions for the 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 close family member intends in good faith to occupy the rental unit.”

The tenant testified the landlord changed the tenancy agreement at this time to provide that it was a fixed term tenancy agreement that set the end of tenancy for October 31, 2107. The landlord disputes this saying the change to the tenancy agreement was at the request of the tenant.

The tenant vacated at the end of October. The tenant had the benefit of the last month rent free. The security deposit was returned to the tenant.

The tenant testified no one has moved into the rental unit and it is vacant. There is a “For Sale” sign on the rental property and the adjoining rental property. The tenant has contacted the real estate agent who has refused to give much information. He was told by the realtor that a suicide or a killing took place in one of the rooms. However, it is clear that the purchaser has not re-sold the property and not moved in.

The Law

Section 52) of the Residential Tenancy Act provides as follows:

- 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.

Based on the evidence presented it appears that the provisions of section 51(2) have not been complied with. Steps have not been taken by the purchaser or close family member to move into the rental within a reasonable period of time after the effective date of the notice. It has been more than 9 months since the date of the Notice. Further the rental unit has not been used the stated purpose for at least 6 months with a reasonable period of time after the effective date of the Notice.

The issue is whether the tenant can make a claim against his landlord and not the purchaser under section 51(2). In the circumstances of this case I determined the tenant has a right to make a claim against his landlord for the following reasons:

- I do not accept the submission of the landlord that she exercised all due diligence and complied with the law. The landlord failed to provide a copy of the written notice that that was allegedly given to her by the purchaser requesting that the 2 month Notice to End Tenancy be given.
- Further, based on the evidence the Notice to End Tenancy appears to be flawed. The Notice states that the purchaser or close family member intends in good faith to occupy the rental unit. However, the landlord testified the purchaser was a corporation. If a corporation was purchasing the property a 2 month Notice to End Tenancy could only have been given if it was a “family corporation” as defined by the Act. The landlord failed to present evidence that it was a family corporation purchasing the property.

In a situation such as this where the landlord failed to present sufficient evidence to prove the 2 month Notice to End Tenancy complied with the section, I determined the applicant could claim against with or both the landlord or the purchaser.

The result might very well have been different if the landlord presented evidence establishing that the 2 month Notice was given in good faith in compliance with the provisions of section 49 of the Act.

Monetary Order

I ordered the landlord(s) to pay to the tenant the sum of \$960.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the 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: August 08, 2017

Residential Tenancy Branch