Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the "Act") to deal with the tenant's application for compensation for loss or damage arising from breach of the Act, regulation, or tenancy agreement and recovery of the application filing fee.

Both the landlord/respondent and the tenant attended the hearing and were given a full opportunity to be heard, to present documentary evidence, to make submissions, and to respond to the submissions of the other party.

Service of the tenant's application and notice of hearing was not at issue.

Preliminary issues: adjournment and use of tenant's evidence

The tenant confirmed receipt of the respondent's evidence. The respondent advised that she had not received the tenant's evidence, which the tenant said that he had included with the application he served on her. The respondent did not expressly request an adjournment but did complain that she did not have the tenant's evidence and was not therefore able to properly respond to it.

The tenant's evidence included a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of May 1, 2016 which stated 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 to occupy the rental unit." The respondent confirmed that she had purchased the unit and that she had asked the former owner to issue this notice on these terms.

The tenant's evidence also included a Craigslist posting for the rental unit in question printed on September 27, 2016 and indicating that it had been posted 2 months earlier. The advertisement was for a "short term 1-5 months" lease. The respondent confirmed that she had advertised the rental unit but did not recall that she had posted it as early as July 27. She said that she had new tenants in the rental unit by September or October of 2016.

The tenant also included a receipt for $3,500.00 for the purchase of shares in the housing cooperative where he relocated after the tenancy in question ended. I advised the respondent that I was not inclined to compensate the tenant for the purchase of these shares (for the reasons set out below).

The tenant's evidence also included a Land Title Office search for the property in question showing that the respondent before me applied to be registered on title in early May, 2016. The respondent did not take issue with this fact.

Based on the respondent's admissions on the matters set out above, and on my rejection of the tenant's claim for the $3,500.00 share purchase, I did not consider that it was necessary to adjourn the hearing in order to allow the respondent to receive and respond to the tenant's evidence. I did ask the tenant to serve the respondent with the evidence set out above and I did advise the respondent that she can apply for a review of my decision on limited grounds.

Issues to be Decided

Is the tenant entitled to compensation?

Is the tenant entitled to recover the application filing fee from the respondent?

Background and Evidence

The tenant testified that he entered into the tenancy in or about April of 2013. It was initially a fixed term agreement and then became a month-to-month tenancy. Rent was $1,200.00 monthly (plus a portion of the utilities) and due on the first of the month. Neither party submitted a copy of the tenancy agreement.

The tenant further testified that his landlord, the former owner, GR, issued the 2 Month Notice described above and that it has an effective date of May 1, 2016. A copy of that notice was in evidence. It is dated May 23, 2016, and the tenant testified that he understood this was a mistake on the part of GR, and that in fact the tenancy ended May 1, 2016.

The tenant also testified that in April of 2016 an appraiser attended the rental unit in order to assess the amount of money the new owner, the respondent SL, could charge for rent. The appraiser told the tenants that the unit would rent for $1,800.00. SL did not dispute this evidence.

The tenant further testified that after vacating the unit on May 1, he saw a Craigslist ad on July 21, 2016 advertising the unit for $1,500.00. The tenant had not included a copy of that advertisement in evidence.

The tenant also stated that the photograph in the advertisement he did submit in evidence, which, as set out above, was printed on September 27, 2016 and indicates it was posted 2 months earlier, contains a photograph from the prior owner's real estate listing.

The respondent testified that she intended to move into the rental unit after she had renovated it. She said that the home was dated and in poor condition, the roof was leaking, and she did not wish to live there until it had been renovated. She submitted two estimates from construction companies for renovation work to be done on the rental property. One, from FW, is dated June 14, 2016. She also submitted a contract for renovations between FW and herself dated July 5, 2016 and deposit of $2,197.13 that she made to FW on the same date. She also submitted text exchanges between herself and the contractors beginning in March, 2016 about meeting to discuss renovations.

The respondent further testified that her father, who had been ill for some time, had a heart attack on or around July 10, 2016 and that she was required to travel abroad to visit him. The respondent submitted some medical imaging results in another language as evidence of her father's illness. She also submitted a receipt for an airline ticket for a flight on July 8, 2016, which appears to have been booked on July 1, 2016.

The tenant argued that there was a discrepancy between the respondent's evidence that she was required to travel to see her father after a heart attack on July 10 and the fact that her ticket had been booked on July 1. He wondered why she had booked the ticket prior to the alleged emergency.

The respondent said that she was out of the country about a month and that she depleted her savings as a result of the trip and her father's illness. As a result she was not able to continue along with her intention to renovate immediately, and so she cancelled the contract for the renovations. She submitted a document dated July 27, 2016 from FW confirming her cancellation of the contract and the refund of her deposit.

The tenant maintained that the building estimates and the texts between the contractors and the respondent are with respect to the lower suite only, and that it is the upper suite that he was required to vacate as a result of the 2 Month Notice. The respondent said that this was not so and that the estimates are for the whole building.

The respondent further stated that since August of 2016 she has been saving money to complete the renovation and then move into the rental unit. She testified that she signed two six month term agreements with the current renters, and that she had intended to require them to vacate after the expiration of the second six month term but agreed to sign another six month term expiring around February of 2018, after the current renter advised he could not secure other housing. None of the term agreements were in evidence.

The respondent in her written submissions said: "After 6 months, I might plan to continue my renovation plan if my family situation is getting better. We do not know what is going to happen tomorrow, next week. I made the plan so I need the house vacant in order to do the major renovation. When the life or family emergency happens suddenly, the plan could be changed. . . "

Analysis

Section 51(2) of the Act states that 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
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> (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,
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> 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.

The tenant appears to be alleging that the purchaser, SL, never actually intended to move into the rental unit. He points to the fact that she a rental appraisal done before assuming ownership of the rental property. He also argues that the contractor's estimates were not for work to be done on the upper suite.

I do not need to decide whether the purchaser intended in good faith to occupy the rental unit, however. This tenancy was terminated for the "stated purpose" of the purchaser's occupying the rental unit. The respondent argues that renovations were necessary before she could occupy the rental unit. Assuming this is true, and assuming the renovations qualify as "steps taken to accomplish the stated purpose," those renovations still need to have begun within a "reasonable amount of time" after May 1, 2016 (the effective date of the 2 Month Notice).

The respondent contracted to pay over $100,000.00 for the renovations. There was no evidence as to how much money she spent as a result of her father's illness. Even if she had been able to show that she had spent $100,000.00 as a result of her father's illness, I would not accept that a delay of what is now over 14 months is "reasonable." Additionally, because the respondent has renewed the current rental agreement so that it does not expire until February of 2018, she will actually be waiting until at least March 1, 2018 to begin the renovations. Only after the renovations will she move in. In her written submissions she only says she might start renovations at that point.

Even if the respondent actually intended to renovate and then move in, and even if her intentions were actually undermined by her father's illness, I conclude that steps have not been taken to accomplish the "stated purpose" within a "reasonable amount of time." The tenant should not have to suffer the consequences of any misfortune that has befallen the new owner. I also note that the respondent could have chosen instead to move into the rental unit without having it renovated in advance.

Based on the above, I must order the respondent to pay the tenant double the monthly rent, or $2,400.00.

Sections 7 and 67 of the Act provide that if one party has breached the Act and the other has suffered losses as a result, the breaching party must compensate the injured party for those losses. However, s. 7(2) requires that the injured party act reasonably to minimize the loss. The tenant has not established on the evidence that his decision to relocate into the housing cooperative was reasonable in the circumstances.

More importantly, the tenant has not established on the evidence the cost of the shares is a "loss." In most circumstances shares can be redeemed or sold and it is not clear whether the tenant can sell his shares upon vacating the cooperative. Therefore I do not award the tenant the $3,500.00 claimed for the purchase of shares.

As the tenant was successful in this application, I find that the tenant is also entitled to recover the $100.00 filing fee from the respondent.

Conclusion

I issue a monetary order for the tenant is the total amount of $2,500.00, inclusive of the filing fee. The respondent must be served with this order as soon as possible. Should the respondent fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: August 22, 2017

Residential Tenancy Branch