



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for the Landlord’s compliance - Section 62; and
3. A Monetary Order for compensation - Section 67.

The Tenant and Respondent LH were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

Respondent MO did not attend the hearing. It is noted that Respondent MO was the previous Landlord and the seller of the rental property at the dispute address that is the subject of the dispute. The Tenant states that the application and notice of hearing was sent by registered mail to Respondent MO on May 19, 2017. The Tenant provided a tracking number for this registered mail. Given this evidence I find that the Tenant served the materials as required by section 89 of the Act. The Tenant states that the mail was refused. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that Respondent MO is deemed to have received the Materials regardless of not collecting the mail.

The Tenant confirms that the tenancy ended over a year ago. As the claims in relation to the notice to end tenancy and the Landlord's compliance are only orders that are relevant to an ongoing tenancy I dismiss these claims.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Relevant Background and Evidence

The Tenant states as follows: the tenancy of a basement suite in a house started on November 2010 and ended on or about June 27, 2016. Rent of \$750.00 was payable on the first day of each month. The tenancy ended as a result of the Tenant being given a two month notice to end tenancy for landlord's use (the "Notice"). The Notice was given to the Tenant sometime in March 2016 and held an effective move-out date of June 27, 2017. The reason stated on the Notice was the purchaser or a close family member of the purchaser was to occupy the unit. The Tenant was told that the move-out date was the chosen as it was the possession date of the purchasers. In March 2017 the Tenant found a rental advertisement online for the suite. The Tenant provides a copy of that advertisement dated March 25, 2017 indicating rent of \$1,275.00 and available immediately. The Tenant was aware of renovations being done to the basement suite due to the advertisement and as the Tenant called and spoke with Respondent LH after discovering the rental advertisement. The Tenant claims the equivalent of two month's rent along with additional compensation in relation to the same claimed breach by the purchaser.

Respondent LH states as follows: the house was originally purchased without an inspection and without conditions. The Respondent viewed the house prior to its purchase. The original intention at the time of purchase was for the Respondent, her husband and two children to live in the top two floors of the house and the Respondent's mother moving into the basement suite. The Respondent provided a

letter of this intention to the seller, Respondent MO. The Respondent also purchased the house with the intention of renovating the entire house however it was discovered after purchase and an inspection done early July 2016 that the house required more renovations than the purchasers could afford. Asbestos was found to be in the outer walls and roof. The Respondent and her family did not move into the house at all as the house was determined by the Respondent to be too dangerous for the children due to the asbestos and because the children would have had to have bedrooms that were not on the main floor. In addition to the unsafe nature of the house the Respondent was offered a job out of the country for August and September 2016 and as a result her husband had to live with his parents in order to provide help with the children. The Respondents rented the upper unit to tenants in September 2016. The Respondents considered the house to be safe for a rental as they were told that the asbestos would not be a problem if the outer walls and roof were not disturbed. The basement suite was rented for May 2017. The Respondent currently resides in Mexico City and could not provide any documentary evidence due to the recent earthquakes and some documents still being in transit. The Respondent does have emails in relation to the house but is not sure if any of the emails contain anything in relation to the unsafe nature of the house.

Analysis

Section 51(2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy for the landlord's use within a reasonable period after the effective date of the notice, or 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, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. Although the Landlord provides evidence of the house being determined to be unsafe after the purchase due to the location of the children's bedrooms I find that this evidence is not credible given the Respondent's additional evidence that the house was viewed in advance of the purchase or issuance of the Notice. Further if the house was

too dangerous for the Respondent and her family due to the presence of asbestos, one wonders how it could be safe for any other family that might rent any portion of the house. In any event, and given the Respondent's evidence that the unit was not lived in by the Respondent or any member of the Respondent's family for any period of time I find on a balance of probabilities that the Landlord did not take any steps to accomplish the stated purpose for ending the tenancy within a reasonable period of time. I find therefore that the Tenant has substantiated an entitlement to the compensation claimed of **\$1,500.00**. As the Act provides a sum for this breach and as a party may not obtain additional compensation for the same breach, I dismiss the remaining compensation claims of the Tenant except for the claim to recover the filing fee.

Although the Tenant also named Respondent MO, as this person was the original landlord and the seller of the property, I find that the Tenant does not have a claim against this person and I dismiss the claims against Respondent MO.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,500.00**. If necessary, this order may be filed in the Small Claims 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 *Residential Tenancy Act*.

Dated: October 27, 2017

Residential Tenancy Branch