



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the tenants for a monetary order for compensation pursuant to section 51, for the cost of moving and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the time the tenants made this application they named both the current owner of the rental unit (ES) and the previous owner (JM), in their application for compensation. ES was represented by an agent who will be referred to as the landlord/purchaser in this decision.

Issues to be Decided

Are the tenants entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started in September 2011 and ended pursuant to a notice to end tenancy for landlord's use of property dated June 12, 2017. The monthly rent was \$3,214.70 due on the first of each month. A copy of the two page notice was filed into evidence. The effective date of the notice was August 31, 2017. The reasons for the notice were:

All of the 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 a close family member intends in good faith to occupy the rental unit.

The landlord/purchaser agreed that he had entered into a contract to purchase the rental property effective September 01, 2017 and stated that a term of the purchase agreement required the house to be vacant as his daughter intended to move into the house.

Based on this request from the then purchaser and now landlord of the rental unit, the previous owner/landlord, JM served the tenants with a notice to end tenancy for landlord's use of property. The tenants stated that the notice was served on June 12, 2017 with an effective date of August 31, 2017. The tenants did not dispute the notice to end tenancy. On June 20, 2017, the tenants gave the landlord notice to end the tenancy effective July 08, 2017 and moved out on that day. The tenants agreed that they received compensation pursuant to a notice to end tenancy for landlord's use of property and had also received their security deposit.

The tenants testified that shortly after they moved out they noticed that the purchaser had advertised the availability of the rental unit at a higher rent of \$3,900.00 effective September 01, 2017. The tenants stated that they felt that their tenancy was terminated for the wrong reasons and that the main goal of the landlord was to command a higher rent. The tenants added that since the notice was given to them in bad faith, they were claiming the cost of moving and compensation pursuant to s.51.

The landlord/purchaser argued that the notice was issued in good faith because the purchaser's daughter intended to move into the rental unit. The landlord/purchaser stated that the purchaser's daughter lives in Australia and encountered difficulty in obtaining a visa to come to Canada and therefore at the end of August 2017, she informed the purchaser that she would not be moving into the rental unit.

The landlord/purchaser stated that he attempted to contact the tenants and offer them the rental unit but they had gone away on vacation. The landlord/purchaser stated that he was unable to get a tenant for four months and therefore lowered the advertised rent from \$3,900.00 to \$3,300.00 at which time he did get a tenant.

The tenants seek an amount equal to double the monthly rent as compensation from the landlord for not complying with the two month notice to end tenancy (\$6,429.40) plus the cost of moving (\$3,448.01) and the filing fee (\$100.00) for a total of \$9,877.41.

Analysis

The undisputed evidence in this matter is that the tenants were served a 2 month notice to end tenancy for landlord's use of property. The tenants had the option of disputing the notice to end tenancy but the tenants chose not to dispute the notice and vacated the rental unit ending the tenancy on July 08, 2017. Since the tenants did not dispute the notice and moved out by choice, they are responsible for their own moving costs.

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six 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.

Section 49(5) of the *Act* stipulates in part that a landlord may end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and 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.

Section 51(2) of the *Act* states in part, that in addition to the amount payable under Section 51(1)[*tenant's compensation for receipt of 2 Month Notice*], 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.

In this case, the tenant received a notice under section 49 and the rental property was not used for the stated purpose and accordingly I find that the tenant is entitled to an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. The tenant has named the previous owner JM in her application for compensation. I do not accept the tenant's position that the burden to pay compensation under section 51(2) of the *Act* falls upon her former landlord JM simply because the tenancy agreement was between the tenants and the landlord.

Rather, I find that Section 51(2) of the *Act*, in relevant part, states the landlord, **or the purchaser, as applicable under Section 49** must pay the tenant compensation. I find this to mean that in cases, such as this matter, where the notice was issued by the then landlord JM on the request of the purchaser ES, the burden to pay compensation would fall upon *the purchaser* if the unit was not used for the stated purpose purported by them. I find it would be unconscionable to consider JM responsible for, or have control over, decisions made by the purchaser ES upon the purchaser providing the landlord notice to end the tenancy as permitted by the *Act*.

In this matter the landlord at the time of sale, acted as requested and as they were obligated to do on the purchaser's written notice in accordance with the *Act*. Therefore I will order the purchaser/current landlord ES to pay the tenants compensation pursuant to Section 51 of the *Residential Tenancy Act*, in the amount of \$6,429.40.

The tenant has proven her case and is entitled to the filing fee of \$100.00.

Overall I find the tenant has established a total claim of \$6,529.40. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenants' claim for the cost of moving is dismissed.

I grant the tenants a monetary order in the amount of **\$6,529.40** against the purchaser/current landlord.

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: May 04, 2018

Residential Tenancy Branch