



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 a tenant's application for monetary compensation from the landlords on the basis on the landlords intend to sell the rental unit after ending her tenancy. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing I confirmed that both parties had exchanged their respective hearing documents and evidence upon each other and the residential Tenancy Branch. I have admitted and considered all of the evidence provided to me by the parties' in making this decision.

Issue(s) to be Decided

Is the tenant entitled to compensation payable to tenants where a landlord does not use the rental unit for the purpose stated on a *2 Month Notice to End Tenancy for Landlord's Use of Property*?

Background and Evidence

The landlords and the tenant entered into a tenancy that started on August 1, 2015 although the tenant occupied the rental unit in the year prior under a tenancy agreement with the former owner. The landlords and the tenant originally set the rent at \$1,690.00 per month payable on the first day of every month but the rent increased twice and at the end of the tenancy the rent was \$1,800.00 per month.

The tenant had paid a security deposit and a pet damage deposit totalling \$1,690.00. The deposits were refunded to the tenant in full after the tenancy ended.

On September 26, 2017 the tenant was served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") with a stated effective date of November 30, 2017. The stated purpose for ending the tenancy on the 2 Month Notice was that: *the landlord or a close family member of the landlord intends in good faith to occupy the rental unit*. The tenant did not file to dispute the 2 Month Notice. Rather, the tenant gave the landlords at least 10 days of advance notice and vacated the rental unit on October 28, 2017.

There was no dispute between the parties that the landlords moved into the rental unit on or about December 1, 2017 and that they continue to reside in the unit. The landlords had provided several documents in an effort to demonstrate they had sold their other property and moved into the rental unit on or about December 1, 2017. The tenant accepted that the landlords did move into the rental unit on or about December 1, 2017 and that they continue to reside in the unit.

The tenant explained that the basis for making this claim for compensation on November 22, 2017 was that the landlords had a bad faith intention or ulterior motive for ending her tenancy. The tenant submitted that the 2 Month Notice was served to her by the landlords' realtor and when she asked the realtor if the landlords were going to sell the property the realtor informed her that the landlords were on vacation. The tenant submitted that only days after her tenancy ended she saw the rental unit advertised for sale and an open house was held.

The tenant explained that she filed her Application for Dispute Resolution on November 22, 2017 because she was concerned that if the landlords' sold the property she would not know where to serve the landlords. I noted that the tenant had served her Application for Dispute Resolution to the landlords on December 1, 2018 using the rental unit address as a service address for the landlords and the landlords did receive the hearing package at the rental unit.

The landlords submitted that they owned another property that they were residing in during the tenancy and they sold that property with the intention of moving into the rental unit upon giving up possession of that other property on December 1, 2017. The landlords proceeded to move into the rental unit on December 1, 2017 as planned.. As for having their realtor serve the tenant with the 2 Month Notice the landlords explained that they were on vacation when they had to serve the 2 Month Notice so their realtor did it for them. As for advertising the rental unit for sale and having an open house, the landlords explained that they needed to ascertain the fair market value of the rental unit

for income tax purposes as the subject property had a “change in use” and they had to declare a deemed disposition of the property on their 2017 tax returns. Since the rental unit was already vacant because the tenant moved out early, the landlord's realtor offered to advertise the unit and hold an open house in an effort to establish its fair market value. The landlords did not sell the property, the landlords moved into the rental unit on December 1, 2017 and continued to reside in the rental unit.

The tenant questioned the landlords' reasons for listing the rental unit for sale and holding an open house to establish its value as this is a very unusual practice and most people would rely upon an appraisal for income tax purposes. The landlords acknowledged that it is uncommon but their realtor offered to do it, the unit was vacant so it was of no inconvenience, and exposure to the market is best for determining fair market value.

The tenant was of the position that she should be reimbursed the cost of the filing fee at the very least since it appeared as though the landlords were going to sell the property after her tenancy ended and she was treated unfairly by the landlords. The landlords were not agreeable to paying the tenant the filing fee either, taking the position that they dealt with the tenant fairly and the tenant filed her Application for Dispute Resolution pre-maturely. The landlords pointed out that had the tenant waited until after the effective date of the 2 Month Notice she could have verified that the landlords did in fact move into the rental unit.

Analysis

Where a landlord ends the tenancy for landlord's use of property the landlord is bound to use the rental unit for the purpose stated on the 2 Month Notice. Otherwise, the landlord must pay the tenant additional compensation equivalent to two month's rent, as provided under section 51(2) of the Act. This compensation is payable in addition to the compensation paid or payable under section 51(1) which the tenant has already received from the landlords.

Section 51(2) provides:

(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...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[my emphasis added]

To determine whether the tenant is entitled to compensation under section 51(2) I must be satisfied that the landlords, or the landlords' close family member, did not occupy the rental unit for at least six months after the tenancy ended starting within a reasonable amount of time after the tenancy ended.

It is important to point out that the reason for ending the tenancy was that the landlord, or landlord's close family member, intended to **occupy** the rental unit. Meaning must be given to the words actually used in the legislation. The Act does not define the word "occupy" and I have turned to the meaning provided by Black's Law Dictionary. Occupy is defined as: "to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession." The Act does not require the landlord to "reside" in the rental unit, whether the landlord actually resided or lived in the rental unit is not relevant. What is relevant is whether anybody else, other than the landlord or landlord's close family member occupied the rental unit after the tenancy ended.

It was undisputed that the rental unit was vacant for a period of time after the tenancy ended, which means no one other than the landlords had possession or occupied the rental unit. Further it is undisputed that on or about December 1, 2017 the landlords moved into the rental unit as their primary residence and continue to do so. Accordingly, I find I am satisfied the landlords have occupied the rental unit since the tenancy ended and have done so for at least six months. Therefore, I find the landlords have used the rental unit for the stated purpose and the tenant is not entitled to additional compensation payable under section 51(2) of the Act.

The tenant asserted that the landlords had a bad faith intention in ending her tenancy. It is hard to imagine that the landlords would be motivated to sell another property, move out of that other property and into the rental unit just to bring the tenancy to an

end. However, the landlords' alleged bad faith intention is not relevant to this case. Rather, a landlord's good faith intention is relevant if the tenant had filed to dispute the 2 Month Notice. The tenant did not dispute the 2 Month Notice. Accordingly, the relevant matter to determine was whether the landlords have used the rental unit for the stated purpose on the 2 Month Notice. As provided above, I find I am satisfied that they did.

I make no award for recovery of the filing fee to the tenant. I am of the view the tenant filed her Application for Dispute Resolution very pre-maturely. As provided above, the landlords were obligated to occupy the rental unit for at least six months starting within a reasonable amount of time after the tenancy ended. The tenant filed her Application for Dispute Resolution approximately three weeks after she vacated the rental unit and the unit had not been re-rented or sold which may warrant such an Application for Dispute Resolution by the tenant. While I understand her concern over not being able to serve the landlords if they sold the unit, that decision is consistent with a protective application and that was her decision for which she must bear the cost.

In light of the above, I dismiss the tenant's application in its entirety.

Conclusion

The tenant's application is dismissed.

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: July 13, 2018

Residential Tenancy Branch