



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMPLETE RESIDENTIAL PROP. MNGT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed under the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and Procedural matters

At the outset of the hearing the landlords' agent indicated that they are no longer working as agent for the landlord and they should be removed from the style of cause and the owners added as the respondents.

The tenant and owners of the property agreed that the style of cause should be amended removing the landlords' agent and replace with the landlords, the owners. Therefore, I find it appropriate to amend the style of cause.

The landlords' agent exited the hearing.

Issue to be Decided

Are the tenants entitled to a monetary order for money owed?

Background and Evidence

The tenancy began on July 1, 2016. Rent in the amount of \$3,007.00 was payable on the first of each month.

The parties agreed that a 2 Month Notice to End Tenancy for Landlord's use of Property was served on the tenants indicating that the tenants are required to vacate the rental unit on July 31, 2017. The parties agreed that the effective date of the Notice was extended to August 31, 2017.

The reason stated in the notice to end tenancy was that;

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenant testified that there are two reasons they do not believe the landlords occupied the premises as stated in the Notice.

The tenant testified that the building strata representative told them that the landlord never submitted an application to move in their belongings, as they need to book the elevator, which has to be properly prepared.

The tenant testified that the landlords also listed the property for sale on October 24, 2017.

The landlords testified that they do not live in Canada and they purchased the property in 2007, with the intent that they would one day be assisting their ageing parents.

The landlords testified that they did move in to the premises with some of their belongings on September 1, 2017; however, they did not need to book the elevator as the items they had brought with them, were very basic, such as a blow up bed and, were easily carried up on their own.

The landlords testified that they resided in the property and were assessing their father's needs as the senior's facilities that he was residing in was not sure that they could continue to provide the proper care he needed.

The landlords testified that shortly after they arrived in Canada, their father had a stroke and was hospitalized for 2 months. The landlords stated that because of their father's health and mental status they determined that they and the current senior's facilities could not provide sufficient care and they found a nursing home in another city that could care for him, which also had other family for support.

The landlords testified that is why they listed the property for sale at the end of October 2017. The landlords stated they kept the property for their own use as they were there for all of September, part of October, back in December and February 2018. The landlords stated that the property was not sold until April 24, 2018 and that it was never re-rented.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 51 of the Act, states if the landlord fails to use the premises for the reason stated in the Notice for at least six month, the landlord must pay the tenants the amount that equals double the monthly rent.

The reason stated in the notice to end tenancy was that;

- The rental unit will be **occupied** by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

I have referred to the Black's Law Dictionary sixth edition for the legal meaning of occupy.

*Occupy. To take or enter upon possession of; **to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.***

[Emphasis added]

I accept the evidence of both parties that the landlords did not book with the strata representative the elevator for moving in their belongings; I find that does not prove the landlords were not occupying the premises.

I further accept the evidence of the landlords that they did occupy the premises from September 1 2017 to April 2018, during this time they dealing with family matters.

While the property was listed for sale two months after the landlords took possession of the property, I find that alone does not support the Notice was issued in bad faith. As the circumstances surrounding the listing of the property was unknown at the time the Notice was issued.

Furthermore, the landlords keep the property for their own use from September 1, 2017 to April 24, 2018, this exceeds the requirement under section 51 of the Act, for at least six months.

Based on the above, I find the tenants have failed to prove the landlords have violation of the Act. Therefore, I dismiss the tenants' application.

Conclusion

The tenants' 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 27, 2018

Residential Tenancy Branch