Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This decision is in respect of the tenants' application for dispute resolution made on June 25, 2018, under the *Residential Tenancy Act* (the "Act"). The tenants sought the following relief under the Act:

1. compensation under sections 51 and 67 of the Act for having received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") when the rental unit was not used for occupancy of the landlords or a close family member of the landlords; and,

2. compensation under section 72(1) of the Act for recovery of the filing fee.

A dispute resolution hearing was convened on November 8, 2018, and one tenant and both landlords attended. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues with respect to service of documents.

While I have carefully reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Are the tenants entitled to compensation under sections 51 and 67 of the Act for having received a Notice when the rental unit was not used for occupancy of the landlords or a close family member?

2. If yes, are the tenants entitled to compensation under section 72(1) of the Act for recovery of the filing fee?

Background and Evidence

The tenants were living in the rental unit (a condominium) prior to the landlords purchasing the rental unit and taking possession on January 23, 2018. A written tenancy agreement (submitted into evidence and titled "Lease Agreement") states that monthly rent, due on the first of the month, was in the amount of $2,200.00. The tenants paid a security deposit of $1,100.00 and a pet damage deposit of $250.00.

On January 30, 2018, the landlords issued and served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property. The Notice was served by the landlord L.F. on the tenants in person, and the Notice indicated that the effective end of tenancy was April 1, 2018. The reason given on the Notice for the tenancy ending was that the rental unit was to be occupied by the landlord or the landlord's close family member.

It is the tenants' position and submission that the landlords or the landlords' close family member or members never occupied the rental unit, and that the tenants are therefore entitled to compensation pursuant to section 51(2) of the Act.

The tenant L.F. testified to the series of events that occurred that lead to the rental unit not being occupied by the landlords or their son. In addition, the landlords provided a written submission, which I shall reproduce here (edited for formatting):

> On January 25th, 2018, prior to receiving a copy of the first complaint filing from the Applicants, the Respondents son and his girlfriend of 5 years announced that they were expecting their first child. This news was received with great joy and excitement. After intense deliberation it was decided that Respondents would request that the Tenants vacate the newly acquired property in question as per RTB/RTA guidelines in order to commence renovations to allow for their son's new family to occupy the unit.
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> The tenants vacated the apartment on April 1, 2018. Due to Strata requirements for requesting renovations, etc the Respondents commenced renovations to the unit on or around April 20, 2018. These renovations commenced and were completed on or around June 10, 2018.

> Unfortunately, on June 7, 2018 the child of Respondents son was still born sending the entire family into a tail spin. During this time of profound grief the Respondents hastily listed the unit with a Realtor, on or around June 22, 2018.

There was an open house held on June 24, 2018. On June 25, 2018, the tenants filed an application for dispute resolution which is the subject of this hearing.

During her testimony, the landlord referred me to an email sent by the tenant I.C. to the landlord L.F., which reads as follows (reproduced as written and edited for privacy):

> From: [tenant I.C.]
> Sent: July 4, 2018 10:13 AM
> To: [landlord L.F.]
> Subject: pay now
>
> Not a threat but a promise.
> This will happen:
> I will have a bailiff scoop that Land Rover, sell it and be paid.
> I will put liens on any property you own.
> I will garnish your BMO and or Work Safe wages. Does your employer have a garnishee policy?
> I will garnish your bank accounts.
> I will be paid. You can pay me now and save embarrassmentment.
> Pay $4500.00 before 5:00 PM Friday Aug. 2018 or too late.

The landlord testified that the entire matter is “very difficult” and that, while the tenant is entitled to his beliefs and opinions, the fact of the matter is that it was originally their intention to move their son, his girlfriend, and then-expected child, into the rental unit, when they issued the Notice.

In his closing submissions, the tenant argued that the Notice was never issued in good faith, and that the onus is on the landlords to establish that they so issued the Notice in good faith. He submitted that the landlords evicted them in order to sell the rental unit at a substantial profit and that the entire process was “just a money grab” and that it was to “simply flip the property.” Finally, he submitted that the landlords have provided zero proof or evidence that they issued the Notice in good faith.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In deciding whether compensation is due, I must apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

Section 49(3) of the Act, on which the Notice was given, states that "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Section 51(2), as it was then in force at the time of the tenancy states that

> (2) In addition to the amount payable under subsection (1), if
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> (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.

I note that the legislation was changed on May 17, 2018, at which point the compensation was increased from two months of rent to twelve months of rent. I further note that section 51(3) of the Act, which gives an arbitrator discretion to excuse the landlord from having to compensate a tenant twelve months' worth of rent in extenuating circumstances, did not exist in the Act at the time of the tenancy.

In this case, the landlords "commenced renovations to the unit on or around April 20, 2018" and that these "renovations commenced and were completed on or around June 10, 2018." In other words, I find that the landlords clearly took steps to accomplish the stated purpose for ending the tenancy. They anticipated and intended for the son, his girlfriend, and an expected baby, to move into the rental unit. I find that commencing renovations within a few weeks of the tenancy ending, and continuing those renovations until June 10, is a reasonable period after the effective date of the Notice.

The onus is on the applicants to prove, on a balance of probabilities, that the respondents failed to comply with the Act. It is not the respondents who bear the onus of proving that the Notice was issued in good faith. Rather, the onus is on the tenants to establish that the landlords failed to comply with subsection 51(2)(a) or 51(2)(b) in order to be awarded compensation under section 51(2).

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not proven, on a balance of probabilities, that the landlords have breached the Act. As such, I need not consider applying the remaining parts of the compensation test as set out above. For the reasons set out above, I dismiss the tenants' claim for compensation under sections 51 and 67 of the Act, without leave to reapply.

In the alternative, in determining whether subsection 51(2)(b) might apply, the tenants submitted no evidence to establish whether the landlords used the rental unit for the stated purpose after June 25, 2018 until the present time, which would have covered

the 6-month period referred to in that subsection. As such, I find that this subsection does not apply in this case.

As the tenants were unsuccessful in their claim, they are not entitled to a monetary award for recovery of the filing fee, pursuant to section 72(1) of the Act.

Conclusion

I hereby dismiss the tenants' application without leave to reapply.

This decision is final and binding, except where permitted under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 8, 2018

Residential Tenancy Branch