



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation or other money owed.

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 matter

In this matter the tenant has made claims against their landlord and the new purchaser. Neither claims are related to each other and should not have been filed in a single application. Therefore, I will only consider at today's hearing whether the new purchaser has failed to comply with the Two Month Notice to End Tenancy for Landlord's Use of Property. The balance of the claim is dismissed with leave to reapply.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I also note for the record that the tenant was argumentative during the entire hearing process, and was not answering direct questions when asked. The tenant provided conflicting testimony on when they provided evidence.

I cautioned the tenant during the hearing that they are required to provide all evidence that is available at the time they make their application. The fourteen-day rule is only for evidence that was not available at the time.

Issue to be Decided

Is the tenant entitled to compensation pursuant to section 51 of the Act?

Background and Evidence

The parties agree that a Two Month Notice to End Tenancy for Landlord's use of Property, issued on January 31, 2018, was served on the tenant. The tenant vacated on April 2, 2018. Neither party provided a copy of the notice.

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

- All of the conditions for 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 close family member intends in good faith to occupy the rental unit.

The tenant testified that the purchaser did use the property for the intended reason, as stated in the notice as the purchase or close family do not intend to move into the premises.

The tenant testified that the purchaser has rented out the premises in which they resided. The tenant stated that they were informed of this directly from the new tenants.

The purchaser testified that they purchased the property and they have moved into the premises. The new purchaser stated when they moved into the premises they opened the space to the basement unit as they are expanding their family.

The purchaser testified that it about two months after they moved in the premises that some friends of theirs asked if they could stay with them, as they were getting married and could not find suitable living due to the market.

The purchaser testified that they allowed their friends to move into the house and they pay money toward expenses; however, they do not have exclusive possession of the premises. The purchaser stated that both parties have full access to all areas of the house and that they use the basement area to teach piano.

Analysis

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

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]

In this case, the purchaser has moved into the premises. The new purchaser opened the lower unit to allow access to the entire premises. The purchaser uses a portion of the lower space to teach piano and have allowed some friend to move into the premises while they find suitable living accommodation.

I find the purchaser has met the definition of occupy as defined in the Black's Law Dictionary. The new purchaser have moved into the premises in which they purchased, in which they conduct business and hold for their own use.

While I accept the purchaser has other people living (to tenant) in a portion of the space that was once the tenant's rental unit, that space is shared and combined with the main portion of the house. I find the purchasers are entitled to have friends live with them and shared expenses. Simply paying money does not constitute a tenancy.

Further, the purchaser did not advertise the premises for rent or enter into an agreement for exclusive possession. The purchaser has the right to share their accommodation with another party, such in this case, their friends, as long as they do not give exclusive possession.

In light of the above, I find the tenant has failed to provide sufficient evidence to prove the purchaser has violated the Act. Therefore, I dismiss the tenant's application without leave to reapply.

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: December 21, 2018

Residential Tenancy Branch