



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 26, 2018 (the “Application”). The Tenant sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Respondent appeared at the hearing with the co-owner of the rental unit. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified as follows. He had a written tenancy agreement with the previous owner of the rental unit. The tenancy started November of 2013 and was for a fixed term of one year and then became a month-to-month tenancy. Rent at the end of the tenancy was \$1,150.00 due on the first day of each month.

The Respondent did not know about the tenancy agreement between the Tenant and previous owner but did not dispute the testimony of the Tenant in this regard. She confirmed she purchased the rental unit from the previous owner as noted on the Two Month Notice to End Tenancy for Landlord's Use of Property dated May 26, 2018 submitted as evidence (the "Notice").

Both parties agreed the rental unit address had an upper and lower suite and that the Tenant lived in the upper suite.

The Notice has an effective date of July 31, 2018. The grounds for the Notice are that "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 purchaser is listed on the Notice as the Respondent.

I reviewed the Notice with the parties who confirmed it is the Notice served on the Tenant. The Tenant testified that it was handed to him May 26, 2018.

Both parties agreed the tenancy ended due to the Notice. The Tenant testified that he vacated the rental unit July 15, 2018.

The Tenant had sought \$18,240.00 in compensation for 12 months of rent based on section 51 of the *Act*. The Tenant advised that the amount requested is based on his new rent amount, not the rent amount for the rental unit at the end of the tenancy.

The Respondent confirmed she signed the Buyers Notice to Seller for Vacant Possession of a Tenant Occupied Property submitted as evidence. She confirmed she and the co-owner of the rental unit asked the previous owner to serve the Notice.

The Tenant testified as follows. He does not believe the Respondent intended in good faith to move into the rental unit. The rental unit was on the market for three days.

Nobody came to see the rental unit. There were no photos of the house on the listing. It seems strange to him that someone would purchase a house without viewing it if they wanted to live in it.

The Tenant referred to a photo of the house submitted as evidence. He said it shows no maintenance has been done to the house. The Tenant submitted that it does not look like anyone lives in the rental unit. The Tenant said he does not believe the Respondent moved into the rental unit. The Tenant said he believes the Respondent wants to tear the house down and build a new house on the lot and that the Respondent did not go through the proper process to do this.

The Respondent testified that she asked for vacant possession of the rental unit for August 3, 2018. She said the intent was that her whole family would move into the house. The Respondent testified that they intended to do work on the house.

The Respondent said there was a dispute with the downstairs tenants in relation to vacating their rental unit. The Respondent testified that she and her family could not move into the house given the state of the property and dispute with the downstairs tenants. The Respondent testified that the downstairs tenants were also served with a notice to end tenancy but that they would not vacate and it took time to go through the process of having them leave. The Respondent testified that the downstairs tenants were very hostile and so her and her family could not move into the upper suite in the house during the dispute with the downstairs tenants. She said a bailiff only removed the downstairs tenants December 10, 2018.

The Respondent testified that she is currently living at the rental unit. She said the upper suite was left empty and she moved into it in January of this year.

The Tenant disputed that the downstairs tenants were hostile and questioned why the Respondent and her family could not move into the upper suite.

I have reviewed the evidence submitted but do not find it necessary to detail it here.

Analysis

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy under section 49 of the *Residential Tenancy Act* (the “*Act*”) and states:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove he is entitled to the compensation sought.

The meaning of “occupy” in *Black’s Law Dictionary* includes “to hold possession of” and “to hold or keep for use”.

The Tenant submitted that the rental unit appears to be empty and disputed that the Respondent moved into the rental unit as stated on the Notice. The Notice states “...because the purchaser or a close family member intends in good faith to occupy the rental unit” [emphasis added]. Neither the Notice, nor section 49(5) of the *Act* that the Notice was issued under, states that the purchaser will move into the rental unit. The Notice and *Act* use the term “occupy”. Leaving a rental unit empty is encompassed in the term “occupy” as that term is used in the *Act*. Landlords and purchasers are permitted to serve a notice to end tenancy under section 49 of the *Act* with the intention

of leaving the rental unit empty. They are not required to physically live in the rental unit.

I acknowledge that the Respondent relied on extenuating circumstances as a justification for not moving into the rental unit. However, I do not find it necessary to determine whether there were extenuating circumstances. It is the Tenant who has the onus to prove the Respondent failed to follow through with the stated purpose of the Notice. The Tenant submitted that the rental unit appears empty. The Respondent acknowledged that the rental unit was empty for a time. This is permitted under the *Act*. Therefore, the Tenant has not met his onus to show the Respondent failed to follow through with the stated purpose of the Notice.

In the circumstances, I am not satisfied the Respondent failed to follow through with the stated purpose of the Notice. Therefore, I am not satisfied the Tenant is entitled to compensation under section 51 of the *Act*.

Given the Tenant was not successful in this application, I decline to award him reimbursement for the filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 29, 2019

Residential Tenancy Branch