Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This dispute resolution proceeding was initiated by the tenants, who filed an application for dispute resolution on October 3, 2018 against the landlord under the *Residential Tenancy Act* (the "Act").

The tenants argue that the landlord is in breach of section 51 of the Act by failing to take steps within a reasonable period, after the effective date of a Two Month Notice to End Tenancy for Landlord's Use of Property, to accomplish the stated purpose for ending the tenancy, and seek compensation in the amount of $20,570.00 pursuant to that section. They further seek an order that the landlord comply with the Act, the *Residential Tenancy Regulation,* or the tenancy agreement, pursuant to section 62 of the Act. Finally, they seek compensation for the filing fee under section 72 of the Act.

A dispute resolution hearing was convened on January 29, 2019 and the landlord, the landlord's agent and the tenant R.C. attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord's agent confirmed the correct legal name of the landlord which is reflected on the cover page of this Decision. The parties did not raise any issues in respect of the service of evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, 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 in the amount of $20,570.00?
2. Are the tenants entitled to an order that the landlord comply with the Act?
3. Are the tenants entitled to compensation for the filing fee?

Background and Evidence

The tenant, who is 68 years old, testified that he had lived in the rental unit since 2010 but that he signed a written tenancy agreement with the landlord in 2017. The tenancy was a fixed-term tenancy that ran from May 1, 2017 until April 30, 2018, with the tenancy to continue as a month-to-month tenancy thereafter. Monthly rent was $1,600.00. A copy of the written tenancy agreement was submitted into evidence.

On May 1, 2018, the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") and served the tenants by way of registered mail, in compliance with the Act. The tenant testified that he picked up the registered mail on or about May 7, 2018. The Notice indicated that the effective end of tenancy date would be July 31, 2018, and that the purpose for ending the 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)." A copy of the Notice was submitted into evidence.

The tenants moved out and found another place to live in July 2018; his new home was less than a kilometer away. He still had friends in the building where he had lived for almost eight years, and one of those friends (more of an "acquaintance" the tenant clarified) was a realtor. His realtor friend told the tenant, "[tenant's first name], the place you were living in is listed [for sale]." This occurred in mid- to late-September 2018. The tenant confirmed that it was listed, and in fact attended an open house on September 20, 2018. He took photographs of the empty rental unit and submitted one of those photographs into evidence. Also submitted into evidence was a copy of the real estate listing for the property.

The listing, which went up on September 10, 2018, indicated that the rental unit was listed for immediate occupation and that there were no rental restrictions. That is, the purchaser of the rental unit could rent it out and comply with strata bylaws. The rental unit had new flooring and countertops installed.

Ultimately, according to the tenant, the rental unit never sold, despite six open houses. It is currently not on the market. Finally, the tenant testified that on the morning of the arbitration hearing, he spoke with someone who lived in the building who told the tenant that “there is nothing there, [the rental unit] is just sitting there.”

The landlord’s agent testified that the landlord sent an email, in April 2018, to the property manager to advise the tenants that the landlord’s parents were planning on coming to Canada from Iran to live in the rental unit, and that the tenants needed to move out. A copy of the email was submitted into evidence. The landlord subsequently issued the Notice in anticipation of this event happening. In addition, the landlord submitted into evidence copies of an airline ticket and itinerary that reflected the parents’ anticipated travel to Canada from Tehran, via Frankfurt, on August 2, 2018.

The landlord’s agent testified that, tragically, the landlord’s parents experienced a medical emergency necessitating the immediate hospitalization of the landlord’s father, who had been diagnosed with cancer. Her parents remained in Tehran, and her father ultimately passed away on December 19, 2018. The landlord was counting on her parents coming and moving in, but given the rapidly changing circumstance, found herself in a difficult financial situation. Quick decisions needed to be made, and the rental unit was put on the market with the hopes that if someone did purchase the rental unit, that the closing date of sale would be extended in case her father recovered. The landlord’s agent argued that the landlord had honest intentions when she issued the Notice but that what happened after that was out of her control.

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. In this case, the tenants claim that the landlord breached the Act by not using the rental unit for the stated purpose.

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. Further, 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.

Tenants' Application for an Order that the Landlord Comply with the Act

The tenant did not present any evidence or make submissions regarding this aspect of their claim. As such, I dismiss this aspect of their claim without leave to reapply. I note, however, that the tenants sought the landlord's compliance with the Act as it pertains to the landlord's alleged breach of section 51 of the Act, of which I shall address below.

Tenants' Claim for Compensation under Section 51 of the Act

In respect of this aspect of the tenants' claim, I confirmed with the tenant that the tenants sought compensation under section 51(2) of the Act wherein a landlord who fails to accomplish the stated purpose for ending a tenancy within a reasonable period must compensate the tenant an amount equivalent to 12 times the monthly rent that was payable under the tenancy agreement.

I note that section 51(2) of the Act which sets out this compensatory obligation on the landlord went into effect on May 17, 2018 (the date on which this amended section received Royal Assent). Section 51(2) before it was amended, however, is as follows:

> (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,
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> 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.

The law that governed the conduct of the landlord at the time she issued the Notice is the law that was in effect on May 1, 2018. While the above-noted amended sections of the Act went into effect just over two weeks after the Notice was issued, a party must be bound by the law *as it existed at the time the landlord made the decision to issue the Notice.* Any potential legal repercussions from a landlord's conduct or actions would be predicated on that landlord's assumed knowledge of the law at the time they provided notice to end a tenancy.

In other words, landlords and tenants can only be expected to make logical, legally enforceable decisions based on the law as they know it to exist at the time of those decisions.

I find that it was the Act that was in place on May 1, 2018 that governs the actions and conduct of the landlord.

In this case, the landlord's agent testified that the rental unit is currently occupied by the landlord. The Notice issued on May 1, 2018, stated that the rental unit would be occupied by the landlord or her close family members (which include parents). That the parents did not ultimately come to Canada is ultimately irrelevant, as it was the landlord who moved into the rental unit and, according to the landlord's agent, currently resides in the rental unit. While there is evidence of the landlord's attempted sale, a sale never occurred. If a sale had occurred, then it might be the case that the landlord failed to take steps to occupy the rental unit. But in this case, this did not occur.

The tenant disputes the landlord's agent's position in this respect and testified that the rental unit is "just sitting there." If this were the case, and if there was evidence to prove that the landlord did not currently occupy the rental unit, then the landlord might be in breach of the Act. However, there is no evidence—other than the oral testimony of the parties—proving that the landlord does not live in the rental unit. And, as I have set out in the beginning of this section, the burden is on the tenants to establish their case on a balance of probabilities.

In cases as such as this, when two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above their testimony* to establish their claim. In this case, I find that the tenants have failed to provide any evidence that the landlord either did not take steps to accomplish the stated purpose for ending the tenancy within a reasonably period after the effective date of the notice, or that the rental unit was not used for the stated purpose for at least six months beginning within a reasonable period after the effective date. (I note that a full six months have only now elapsed since the end of the tenancy.)

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 met the onus of proving their claim for compensation under section 51 of the Act. As such, I dismiss this aspect of their claim without leave to reapply.

As the tenants were not successful in their application I decline to award compensation for the filing fee.

Conclusion

I dismiss the tenants' application without leave to reapply.

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 30, 2019

Residential Tenancy Branch