



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, FFT

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$24,000
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on January 15, 2019.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on June 15, 2018 and end on June 15, 2019. The rent is \$1950 per month payable on first day of each month. The tenant(s) paid a security deposit of \$975 and a pet damage deposit of \$975 at the start of the tenancy.

On August 29, 2019 the landlord gave the tenant a 2 month Notice to End Tenancy that set the end of tenancy for November 30, 2018. The 2 month Notice to End Tenancy stated relied on the following grounds:

- 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 a close family member intends in good faith to occupy the rental unit

The tenants did not dispute the Notice to End Tenancy even though they had valid grounds to do so as they had entered into a fixed term tenancy. They testified they vacated the rental unit on October 31, 2018.

The rental property was sold and the buyer took possession in early December. The buyer or close family member did not move in. The rental property was demolished and they are in the process of constructing a duplex on the property.

The landlord testified he was not aware that the buyer intended to demolish the property at the time the Notice to End Tenancy was served. He produced a document entitled TENANT OCCUPIED PROPERTY – BUYERS NOTICE TO SELLER FOR VAANT POSSESSION which indicates that the buyer or a close family member intended to move in and that the buyer required has asked that seller give the buyers notice requiring the tenants to vacate by December 1, 2019.

The tenants submit the situation is egregious. They submit that the purchaser is a real estate agent. They further submit that the seller was fully aware the rental property was going to be demolished. They testified that at the time of the walkthrough the seller told the tenants he did not have to look that closely as the rental property was going to be demolished. The tenants submit that the property was listed for a short period of time and this is further evidence of bad faith. The Tenants added value to the house and have been their lives were significantly disrupted because of the obligation to move.

The Law:

Section 7 of the Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) 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 51(2) and (3) of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (2) Subject to subsection (3), **the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant (my emphasis)**, 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.⁵¹

Analysis:

After carefully considering all of the evidence and the submissions of the parties I determined the Tenants failed to establish a claim against the Respondent for the following reasons:

- Section 51(2) provides that if steps have not been taken to accomplish the stated purpose or if the rental unit is not used for that stated purpose for at least 6 months from the effective date of the notice the “...**the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant** the equivalent of 12 months rent subject to subsection 51(3). Section 7 provides 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.”
- The Applicant failed to prove that the Respondent failed to comply with the Act. While the Respondent served the two month Notice to End Tenancy on the Tenants he did so at the request of the purchaser.. The Act contemplates a landlord (seller) would be doing this. The Applicants failure to comply with the Act was a result of the conduct of the purchaser and not the Respondent. The demolition occurred after the purchaser took possession and on the instructions of the purchaser. .
- The Tenants alleged the Respondent was working in concert with the Purchaser. I determined the Applicants failed to present sufficient evidence to prove this allegation.
- This is not a situation where the purchaser has disappeared. The Applicants know who the purchaser is.
- I note that in other claims where there may be doubt as whether the seller or the purchaser was the non complying party, the Applicant claimed against both of them. In this case the Applicants chose to claim against the seller only.

- The Applicants may have a possible claim against the purchaser subject to the provisions of section 51(2) and (3). However, that claim is not before me and I make no determination with respect to it.

Conclusion:

As a result for the reasons set out above I dismissed the application brought by the Tenants against this Respondent without leave to re-apply. I also dismissed the claim for reimbursement of the cost of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on the authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 09, 2019

Residential Tenancy Branch