



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

The tenant seeks to recover the equivalent of twelve months' rent, being the penalty imposed under s. 51 of the *Residential Tenancy Act* (the "Act") in the event a landlord issues a two month Notice to End Tenancy for landlord use of property under s. 49 but does not take steps to accomplish the stated purpose in the Notice or doesn't use the rental unit for the stated purpose for at least six months within a reasonable time after the effective date of the Notice.

In this case, the Notice stated that the landlord had entered into an unconditional agreement to sell the rental unit and the purchaser had requested possession in writing. Such a reason for ending a tenant is a lawful reason under s. 47.

The tenant attended the hearing. The landlord was represented by her husband Mr. M. A.. They were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the landlord have good grounds to end this tenancy? If not is there a mitigating factor as permitted by s. 51(3)?

Background and Evidence

The rental unit is a two bedroom condominium apartment in a three building, 118 unit condominium complex.

There is a written tenancy agreement. This tenancy started in March 2017. The rent was \$925.00 per month. All deposit money issues have been settled between the parties.

By a two month Notice to End Tenancy in the approved form dated July 31, 2018 the landlord purported to end this tenancy September 30, 2018 under s. 49(5) of the *Act*, which provides:

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenant and her family moved out by September 30, into another apartment in the same complex. The new place is slightly larger, a three bedroom, but rents for \$1650.00 per month.

It is agreed that the landlord did not have a sale for the rental unit at the time the Notice was given. She is still the owner. There was no purchaser and no request in writing for the landlord to give the tenant this Notice.

The Notice was signed by a Ms. J.B., who Mr. M. A. describes as the strata leasing agent. He testifies that she was texted by his realtor Mr. A. S. on June 11, 2018, "with a

text reading, "... unit 328 owner wants to sell. Please give notice to tenant. ... He is going to list with me."

Mr. M. A. says that he and his wife were having trouble showing the place to prospective purchasers because the tenant was being difficult. His intention had been for Ms. J.B. to give the tenant notice for the realtor to show the rental unit, not to move out.

Mr. M. A. says he did not learn of the Notice until after the tenant and her family moved out. He claims the tenant did not move out as a result of the Notice but because she found a better place to live.

He also says that there exist extenuating circumstances for what happened. The tenants in the basement of the home of his and his wife had to move out for an extended period due to a flood in the basement. They were lodged in the rental unit after these tenants moved out and so the landlord could not sell it.

Mr. O. A., the tenant's son testifies that the landlord well knew of the fact of the two month Notice before he and his mother moved out because he met with him in the presence of the realtor Mr. A. S. and Ms. J. B.'s husband to confirm the move out and to offer to pay the last month's free rent allowed by the *Act* in order to stay. He says that he was told that the new owner wanted to move in. Mr. O. A. asked how the landlord sold the place when there had been no showings or viewings and were told that the purchaser looked at pictures.

Mr. O. A. says the move out was because of the Notice and not because a better place was found. His mother is on social assistance and the higher rent for the new place is an impediment for her.

Mr. M. A. and Mr. A. S. both deny the alleged meeting took place.

Ms. G. F. is a friend of the tenant. She says the tenant (who does not speak English well) did not understand the Notice and so simply moved out.

Analysis

Mr. M. A. suggests that the tenant did not move out because of the Notice but because she found a better place. I consider there is little evidence to support this conclusion and I find the tenant moved because of this two month Notice.

I have some doubt that Ms. J. B. after receiving the text submitted by the landlord would wait seven weeks and then issue a Notice to End Tenancy stating the landlord has sold the apartment when the text clearly indicated it had not been sold. That doubt is accentuated by the fact that Ms. J. B. did not give evidence. Ms. G. F. indicated that she had called Ms. J. B. during this hearing and was told there had been no mistake, but I discount that evidence as being too remote to be of value.

In my view it does not matter whether Ms. J. B. made a mistake by issuing the Notice in question and ending this tenancy. She was at all times the agent of the landlord and the landlord is responsible for any such mistake in so far as her tenant is concerned. The landlord is free to pursue her remedies against her agent for the alleged mistake.

Section 51(3) of the *Act* allows a landlord to be excused from paying the penalty in “extenuating circumstances.” Residential Tenancy Policy Guideline 50, “Compensation for Ending a Tenancy” provides that “extenuating circumstances” mean “circumstances where it would be unreasonable and unjust for a landlord to pay compensation.”

The circumstance put forward by Mr. M. A. are that the landlord could not sell the rental unit because after this tenant vacated it had to be inhabited by the tenants from the landlord’s basement suite during water damage repairs to that basement suite. With respect, this proposition misses the point that it is at the time the Notice is given that there must be an unconditional agreement of purchase and sale of the property. I find that there are no extenuating circumstances in this case that would make the twelve month penalty unreasonable or unjust.

Conclusion

Steps have not been taken within a reasonable period after this Notice to accomplish the stated purpose of ending the tenancy, namely to house the new owner, because there never was a new owner.

I award the tenant \$11,100.00, being the equivalent of twelve months' rent. A monetary order in that amount will issue against the landlord.

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: August 08, 2019

Residential Tenancy Branch