



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on August 9, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51; and,
- recovery of the filing fee.

The Tenants both attended the hearing along with their legal counsel (collectively referred to as the Tenants). The Landlord was present with his counsel, and a witness who lives near the rental unit on the same floor.

Both parties exchanged evidence and the Notice of Hearing via email, and both parties confirmed that they were okay with this as a method of service. Both parties were willing and ready to proceed, and neither party took issue with the service of the evidence or the Notice of Hearing.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation pursuant to section 51 the Act?

Background and Evidence

Both parties agree that monthly rent was \$1,690.00. The Tenants are seeking 12 months' compensation, pursuant to section 51 of the Act because they feel the Landlord did not perform the stated purpose on the 2 Month Notice to End Tenancy for Landlord's Use (the Notice), in good faith.

The Tenants stated that the Landlord provided a lot of conflicting information with respect to what his plans were with the rental unit, particularly from May 2018, until when the Notice was issued. The Tenants stated that the Landlord would tell them that he was moving in, then he would decide he was selling it, then he would change his mind again. The Tenants provided excerpts from their communication, and noted that at the end of May 2018, the Landlord gave them a Mutual Agreement to End Tenancy, and told them that he was going to sell the rental unit. The Tenants stated that the Landlord gave them another Mutual Agreement to End Tenancy on July 28, 2018, and further stated that he would be selling the rental unit. The Tenants did not indicate that they signed either of these mutual agreements, which were signed by the Landlord. The Tenants stated that the Landlord set up different real estate showings, which at one point became an issue. Then, on August 5, 2018, the Tenants stated that the Landlord told them that he would not be selling, but rather moving in. The Tenants referred to the first two Mutual Agreements as "Notices", and provided copies of these into evidence.

The Tenants stated that they received the actual 2 Month Notice on September 30, 2018, which stated that the Landlord or a close family member would be moving in. The Tenants stated that they moved out at the end of December 2018. The Tenants further stated that on March 13, 2019, they found a craigslist ad for a property that looked just like theirs, which made them believe the Landlord was not doing what he said he would do on the Notice. The Tenants provided a copy of this ad into evidence. They pointed out that it lists a different unit number in the main title of the ad, but the map shows that it is the same unit number as theirs. The Tenants acknowledge that the Landlord owns two units, side by side, in the building. The Tenants stated that the photos of the unit in the ad were the same as theirs, which is why they believe it is this unit.

The Landlord explained that the last year or so has been very complicated legally and financially. He stated that he separated from his wife, and is in the process of splitting

up the family assets. The Landlord stated that both he and his wife owned both of the rental units, and both of them are still currently on title, although they are the subject of separation agreements and ongoing asset splits.

The Landlord explained that he was planning on selling the property for a while, tried to list it, and eventually changed his mind. After deciding not to sell, and while in the midst of separation from his wife, he issued the Notice on September 30, 2018, so that his wife could move in, and live separately from him. The Landlord stated that he is still not divorced from his wife and is only separated. The Landlord stated that his wife moved into the rental unit at the beginning of January 2019, right after the Tenants moved out. The Landlord stated that she lived there until the end of June 2019, and she eventually re-rented the unit to her friend on July 1, 2019. The Landlord called a witness into the hearing, S.K., who knew his wife, and lives in the building. He corroborated that she moved her belongings in, and was seen there multiple times with her kids. S.K. also corroborated that she moved out at the end of June 2019.

With respect to the craigslist ad provided into evidence, the Landlord stated that he and his wife own two condos, side by side, and they are both identical. The Landlord stated that he bought them both directly from the builder, and the finishes are identical because he chose it this way. The Landlord stated that they are so similar that he uses the same photos for rental ads. The Landlord stated that the ad the Tenants are referring to clearly lists his other rental unit in the main title of the ad. The Landlord stated that he posted this ad sometime around March 2019 but it is unrelated to this rental unit for this proceeding. The Landlord stated that the contractor who was fixing up his other unit next door wrote a letter (provided into evidence), and it states he was fixing up the other unit in March/April 2019 and during that time, he was over at the Landlord's wife's residence next door (subject rental unit) several times.

The Landlord stated that he is not sure why the map on the ad shows the address of this rental unit, but insists that it was for his other unit. The Landlord again reiterated that the title of the ad is very clear that the ad was for the other unit. The Landlord stated that the website automatically populated the address of this rental unit into the map area, but the title of the ad should be the most instructive here because that was something he actually inputted and it shows the ad in March 2019 was for his other unit, not this one.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenants are seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$1,690.00) because they feel the Landlord did not, in good faith, perform the stated purpose on the Notice.

First, I turn to the following portion of the Act which outlines what the Tenant would be entitled to if the Landlord did not use the property for the stated purpose for at least 6 months:

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, 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.

In this case, the Landlord issued the Notice on September 30, 2018, because he, or close family member was going to move in. In this case, that family member was his wife, who he is currently separated from. I note that the Landlord has not yet divorced, and both he and his wife are still on title for both rental units they own in the building. Although there are separation agreements at play regarding the entitlement to assets, I find the party named as the Landlord on this application is still the Landlord for the purposes of this application, and this tenancy. I note he was the one who was dealing with the Tenants leading up to the issuance of the Notice.

Although the Tenants do not feel the Landlord is acting in good faith, I find the Landlord has provided a compelling and reasonable explanation as to why he was changing his mind at different points in time last year, before he issued the Notice. I note he was in the midst of separation from his wife, with whom he co-owned both this, and another adjacent rental unit. Although the Landlord initially told the Tenants he would be selling, then changed his mind, I do not find this was done in bad faith. I note the Notice was issued under the ground that he, or a close family member would move in, and as such, this is what must be considered when determining whether or not he accomplished the stated purpose on the Notice, and whether the Tenants are due compensation based

upon this. I note the Landlord must take steps within a reasonable period after the end of the tenancy to accomplish the stated purpose, and use the unit in this manner for at least 6 months, as per section 51 of the Act.

The Landlord stated that his wife, whom he is separated from, moved in at the beginning of January 2019, and did not leave until the end of June; she did not re-rent the unit until July 1, 2019, which is 6 months later. I note the Landlord's witness corroborated that he saw the Landlord's wife in the building with her children, and her belongings, up until the end of June. The witness believed she was living there. I also note the Landlord provided a typed email from the contractor who was working on their other unit, next door, and he stated that the Landlord's wife was living next door while he was renovating around March 2019. After looking at the totality of the testimony and evidence on this matter, I find it more likely than not that the Landlord's wife moved in (also evidenced by copies of her photo id) and occupied the rental unit for 6 months (January through June 2019). The Landlord asserts that the unit was not re-rented until July 1, 2019, as such, he fulfilled his obligations under the Act.

I note the Tenants believed that the ad they saw in March 2019 was for this particular rental unit. I note they pointed to the bottom of the ad, where the map shows the address was the same as this unit. However, I note this part of the ad appears to be part of a map field which is secondary to the main ad particulars. I find the more helpful and compelling portion of this ad is the information actually inputted by the Landlord (the title of the ad). This title explicitly lists the address of the Landlord's other rental unit. As such, I find it more likely than not that this ad was for a different rental unit.

Overall, I find the Landlord has provided sufficient evidence to demonstrate that he fulfilled the stated purpose on the Notice for a 6 month period, and the unit was not used for a different purpose until after the 6 month period.

As such, I dismiss the Tenants' application on this matter. As the Tenants were not successful in this application, I decline to award recovery of the filing fee paid to make this application.

Conclusion

The Tenants' application is dismissed, in full, 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 *Residential Tenancy Act*.

Dated: August 09, 2019

Residential Tenancy Branch