



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation pursuant to a s.49 notice to end tenancy for landlord's use of property and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself and the landlord was represented by an agent. As both parties were in attendance, I confirmed the service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started on February 07, 2014 for a fixed term of one year. At the end of the term the parties entered into another fixed term tenancy agreement. This went on for three years. The last fixed term agreement entered into by the parties had an end date of February 28, 2019. The monthly rent was \$1,300.00 due on the first of each month.

On October 31, 2018, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property, with an effective date of January 31, 2019.

The reason for the notice was that all of the conditions for the sale of the rental unit had been satisfied and that the purchaser had asked the landlord, in writing to give this notice because the purchaser intended in good faith to occupy the rental unit.

Even though the parties were in a fixed term tenancy agreement with an end date of February 28, 2019, the tenant did not dispute the notice and proceeded to make arrangements and change his plans to accommodate a move out date of January 31, 2019.

One of the reasons for the notice to end tenancy was that all the conditions of the sale of the rental unit were satisfied. However, the evidence shows that they were not. One of the subjects of the sale was for the purchaser to obtain financing. The purchaser was not able to obtain financing and the deal fell through.

On December 01, 2018, the landlord informed the tenant in an email that the sale did not materialize and that the notice to end tenancy was void. The landlord offered to allow the tenant to continue to reside in the rental unit. The tenant refused the offer citing that he had already made plans to move out. The tenant did not file any documents into evidence to support his plan changes. However, on December 02, 2018, the tenant requested that he be allowed to end the tenancy on February 28, 2019 as per the end date of the fixed term tenancy and the landlord agreed. The tenant was given the last month of rent-free stay.

The tenant stated that the landlord had deceived him by serving him with a notice to end tenancy for landlord's use of property prior to the subjects having been removed. The landlord replied by saying it was not the landlord's intent to deceive the tenant and she was happy to allow the tenancy to continue at the same monthly rent.

The landlord stated that since the tenant did not want to continue to rent the unit, she advertised for a new renter. The tenant fully cooperated with the landlord and helped her secure a new tenant effective March 01, 2019 at a higher rent of \$1,650.00.

The tenant is applying for compensation in the amount of 12 months rent because the reason for the notice to end tenancy was not fulfilled.

Analysis

1. 12 months compensation - \$19,757.52

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement.

In addition to the amount payable under subsection (1), if

- (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, the landlord as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the reason for the notice was 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 intends in good faith to occupy the rental unit.

Based on the testimony of both parties and the documents filed into evidence, I find that the notice was not valid for two reasons. The first reason is that the parties were in a fixed term tenancy agreement and the end date of the tenancy on the notice to end tenancy was prior to the end date of the fixed term. The second reason is that all the conditions of the sale were not satisfied at the time the notice was served on the tenant.

In addition, when the sale fell through, the landlord informed the tenant, two months before the effective date of the notice that the sale had collapsed and that he had the option of continuing to rent the unit. The tenant chose not to rent the unit but requested an extension of the end date of tenancy to coincide with the end date of the fixed term.

During the last months of tenancy, the tenant cooperated with the landlord and showed the unit to prospective renters till one was found. The tenant fully knew that the landlord was unable to follow through with the reasons for the notice to end tenancy, due to circumstances that were beyond her control.

Based on the above, I find that the landlord did not intend to deceive the tenant when she served the notice to end tenancy for landlord's use of property.

I further find that the sale did not materialize due to the purchaser's inability to obtain financing. It is not likely that the landlord would orchestrate this scenario with intent to deceive because she would not receive any financial gain but on the contrary would be putting herself at risk of providing compensation to the tenant.

I also find that the tenant was given two months notice regarding the collapse of the sale of the rental unit and was also offered the option of continuing to rent the unit beyond February 28, 2019 but declined the offer because he had made plans to move out.

Even if the sale went through and the purchaser did not move into the rental unit, thereby not fulfilling the reason for the notice to end tenancy, the purchaser and not the landlord would be liable for compensation to the tenant.

Based on the above and due to circumstances that were beyond the control of the landlord, I find that the tenant's claim for compensation in the amount of 12 month's rent must be dismissed.

Since the tenant has not proven his case, he is not entitled to the recovery of the filing fee of \$100.00.

Conclusion

The tenant's application is dismissed,

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 19, 2019

Residential Tenancy Branch