



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for compensation payable to a tenant where the landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*, as provided under section 51(2) of the Act.

The hearing originally commenced on December 27, 2019 and on that date I was not satisfied the tenants had sufficiently served the owner of the property with notification of the claims against him. I did not dismiss their application on that date due to insufficient proof of service because the two year statutory time limit for making a claim had passed by the time the hearing commenced. For the benefit of the tenants, I ordered the tenants to provide me with more documentation pointing to the service address for the respondent and adjourned the hearing. The tenants provided additional documentation pointing to two mailing addresses for the owner, both of them in the United States. In the Interim Decision I issued on January 8, 2020, I ordered the tenants to serve the respondent again using the addresses appearing on the land time office and BC Assessment records.

The tenants served the respondent, as I had ordered, by registered mail sent on January 20, 2020. The respondent received one of the packages sent to him and the respondent provided evidence to the Residential Tenancy Branch and the tenants in response to the claims against him.

The hearing reconvened on March 10, 2020 and on that date, all parties appeared. Both parties had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

It should be noted that the landlord named in this matter is the purchaser of the rental unit and the tenancy was ended under section 49 of the Act so that the purchaser, or close family member of the purchaser may occupy the rental unit. Under section 58 of the Act, "landlord" includes a purchaser as defined in section 49 who, under section 49(5)(c), asks a landlord to give notice to end a tenancy of a rental unit. In this case, the tenancy was ended pursuant to section 49(5)(c) of the Act. As such, the individual named as landlord in the tenant's Application for Dispute Resolution meets the definition of landlord for purposes of this proceeding and I have referred to him as such in writing this decision.

Issue(s) to be Decided

Are the tenants entitled to additional compensation from the purchaser/landlord under section 51(2) of the Act because the purchaser/landlord did not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*?

Background and Evidence

The tenants entered into a tenancy agreement with the former owner of the property that commenced on July 13, 2011. At the end of the tenancy the tenants were paying rent of \$2,100.00 on the first day of every month.

The property was put up for sale and the tenants were served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") by their former landlord on October 19, 2017. The 2 Month Notice had a stated effective date of December 31, 2017 and indicates the reason for ending the tenancy is as follows:

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

The tenants vacated the rental unit earlier than the effective date, as tenants may do when in receipt of a 2 Month Notice, on November 17, 2017.

The tenants are of the position they are entitled to additional compensation from the purchaser/landlord under section 51(2) of the Act because:

- the purchaser is not a citizen of BC or Canada;

- the purchaser did not move into the rental unit; and,
- the purchaser continues his profession in the United States as evidence by a search of his name on the internet.

The landlord testified that ownership of the rental unit was transferred to him effective on January 15, 2018 and he flew up from his home in the United States to take possession of the rental unit on January 16, 2018. The landlord testified that he purchased the property to use as a vacation property and when he and his wife arrived on January 16, 2018 they stayed approximately one month. During that time they purchased and assembled furniture and artwork for the unit and toured the city. The landlord also purchased a “handbike” to use while staying at the rental unit as he is a paraplegic. The landlord and his wife returned to stay in the rental unit again for two weeks from June 6, 2018 through to June 20, 2018 and returned again for the Christmas holiday season in December 2018.

The landlord explained that due to his disability it is easier to stay in his own condominium rather than stay in hotels while vacationing in the city where the rental unit is located.

The landlord acknowledged that he is a radiologist by profession and has a business in the United States; however, due to his disability he has a more administrative role in his business and he can work remotely with a laptop and an internet connection.

The landlord testified that he does not rent out the rental unit, explaining that the unit was not purchased for that reason; and, he pointed out that short term rentals of less than six months are prohibited by the strata by-laws so he cannot rent the unit out in between his stays in the rental unit.

As evidence of staying in the rental unit, the landlord provided copies of airline tickets, the purchase of artwork for the rental unit, the purchase of the hand bike for use while staying at the rental unit, photographs of himself in the rental unit assembling furniture and touring the city.

The tenants were of the position that the landlord was required to move into the rental unit to use as his principle residence to avoid paying them the additional compensation they seek.

The tenants pointed out that the landlord completed the speculation and vacancy tax declaration form for 2020 indicating a “disability exemption” which the tenants interpret

to mean someone with a disability, other than the landlord, must be living in the rental unit.

Analysis

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation as provided under section 51 of the Act.

The compensation provision under section 51(2) of the Act, which is the section the tenants seek compensation in this case, was amended effective May 17, 2018. Since the tenancy was ended pursuant to a 2 Month Notice served before May 17, 2018 the tenants are entitled to the compensation payable under section 51(2) as it was written prior to the amendment, or the equivalent to two months of rent.

At the time the 2 Month Notice was served, section 51(2) read as follows:

(2) 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 or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The stated purpose of the 2 Month Notice was that *"the purchaser or a close family member intends in good faith to occupy the rental unit."*

I reject the tenant's position that the rental unit had to be used as the principle residence of the purchaser since the Act does not impose such a requirement. Rather, in interpreting statutes, meaning must be given to the words actually used. The legislation uses the word "occupy". As such, the purchaser, or his close family member or spouse, was required to "occupy" the rental unit within a reasonable amount of time after the

effective date of the notice and for at least six months to avoid paying the compensation under section 51(2).

As for the meaning of “occupy”, the Act does not define the word “occupy” and I have turned to its ordinary meaning. The ordinary meaning of “occupy” includes: to take up (a place or extent in space) and to take or hold possession or control of.

Upon consideration of the evidence before me, including the airline tickets, receipts and photographs, I accept that the landlord began to occupy the rental unit the day after he acquired ownership of the property and that he and his spouse occupied by the rental unit for several weeks while they stayed in the rental unit during next six months; and, the landlord’s possessions remained in the rental unit when the landlord returned home to the United States. There was no evidence pointing to the landlord re-renting the unit or leaving it vacant during those six months. Therefore, I accept that the landlord and his spouse “occupied” the rental unit for six months beginning one day after the landlord acquired ownership of the property.

As for the speculation and vacancy tax declaration of 2020, I find it to be largely irrelevant as it pertains to a period of time well after the relevant period of time. The landlord’s obligation to occupy the rental unit was a six month period of time starting within a reasonable amount of time after the effective date of the 2 Month Notice. The landlord obtained ownership of the property on January 15, 2018 and began occupying the unit the following day and, as I have found above, he occupied the rental unit for the following six months. Starting as early as August 2018 the landlord was at liberty to use the rental unit without consequence under the Act.

In light of the above, I find the tenants failed to demonstrate an entitlement to additional compensation under section 51(2) of the Act and I dismiss their application in its entirety.

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: March 11, 2020

Residential Tenancy Branch