



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 827788 ALBERTA LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing was set to deal with a tenant's application for monetary compensation payable where a landlord does not use the rental unit in accordance with a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice"), as provided under section 51(2) of the Act.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. The tenant appeared on his own behalf. The shareholder of the corporate owner and an agent for the property management company appeared on behalf of the landlord.

I confirmed that the parties were in receipt of the hearing documents and materials submitted for my consideration by the other party and I admitted the documents into evidence and I have considered them in making this decision, without any objection from the parties.

Preliminary and Procedural Matters

The style of cause was amended, with consent of all parties, to identify the landlord as the corporate owner and exclude the property management company that no longer manages the property.

The style of cause was amended to reflect the unit number of the rental unit.

Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to 12 months of rent under section 51(2) of the Act?

Background and Evidence

The rental unit is owned by a corporation controlled by a sole shareholder. The shareholder is referred to by initials EK in this decision. A property management company had been acting on behalf of the owner throughout the subject tenancy.

The tenant and the property management company entered into a fixed term tenancy agreement for a tenancy set to commence on June 15, 2018 and expire on June 30, 2019. The tenancy agreement provides that upon expiry of the fixed term the tenancy would continue on a month to month basis.

On July 24, 2019 EK instructed the property management company to issue a notice to end tenancy to the tenant because she would be moving into the rental unit. On July 25, 2019, the property management company issued a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") to the tenant with a stated effective date of September 30, 2019. The reason for ending the tenancy, as stated on the 2 Month Notice, was:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse child; or the parent or child of that individual's spouse)*

The tenant did not file to dispute the 2 Month Notice. The tenant gave the property management company 10 days of notice to end the tenancy effective September 16, 2019. The property management regained possession of the rental unit on September 16, 2019.

The agent for the property management company acknowledged that an oversight was made in issuing the 2 Month Notice. Since the property was owned by a corporation and that EK intended to reside in the rental unit the stated reason for ending the tenancy should have read:

- *The Landlord is a family corporation and a person owning voting share of the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

On October 17, 2019 the property management company turned possession of the rental unit over to EK and their management agreement ended at that point.

On November 7, 2019 the tenant determined the rental unit was listed for sale on the Multiple Listing Service (MLS) and the listing indicated "immediate occupancy" was available. On November 28, 2019 the tenant contacted the listing Realtor and made enquiries. According to the tenant, the Realtor stated the unit was available for showing as it was vacant and available for immediate occupancy. On November 29, 2019 the tenant initiated this Application for Dispute Resolution seeking compensation on the basis the unit was vacant, listed for sale, and available for immediate occupancy.

In response to the tenant's claim, EK provided a significant amount of documentation in an effort to demonstrate she has been living in the rental unit since October 17, 2019 and she continues to do so. EK provided copies of: internet invoices, BC Hydro invoices, a receipt for gym membership, documentation indicating she has volunteered in the area, numerous credit card statements and other receipts for purchases made in the area of the rental unit. EK also provided letters from friends who claim to have visited EK at the rental unit, along with their travel receipts. EK also provided her own travel receipts to demonstrate the dates she travelled to/from the rental unit property.

Upon review of the landlord's evidence, the tenant conceded that EK has been living in the rental unit and continues to do so; however, the tenant remains of the position he is entitled to compensation under section 51(2) because:

1. The landlord's intention in ending the tenancy was to sell the property and not live in the rental unit for at least six months as demonstrated by her listing the property for sale, with immediate occupancy available, only 3 weeks after she regained possession of the unit.
2. The landlord would have likely sold the unit had a buyer come along offering the listed price.

EK was of the position the tenant is not entitled to compensation under section 51(2) because the tenancy was ended so that she may reside in the rental unit and she did move into the rental unit and she has continued to reside in the rental unit for at least six months.

EK stated she has another property that she owns in the Interior of the province. EK testified that she decided to reside in the rental unit to be closer to her father who is in declining health and lives in a town not far from the rental unit. EK intended to reside in the rental unit for at least six months as she was aware of her requirement to do so.

EK acknowledged that she did list the rental unit for sale in November 2019. EK explained that she did so because she cannot financially afford to carry two properties (the house in the Interior and the rental unit property), especially after earning little income in 2019, and after conducting sales comparisons she noted that it often takes several months to sell properties where the rental unit is located. EK testified that she wanted to see if there was interest in the property but that she intended to give up possession to a buyer after at least six months had lapsed; however, she has not entered into a Contract of Purchase and Sale and she has not vacated the rental unit. Rather, the property has been taken off the sales market.

EK explained that in late November 2019 she had to return to the Interior for a medical appointment and she informed the Realtor she would be away for 7 to 10 days and to show the unit to prospective buyers if there was a request for showing while she was out of town. During that time, the tenant called her Realtor and the rental unit would have been available for showing since she was away, but she cannot speak to whether or why the Realtor said the unit was vacant because it was not. Rather, the unit was furnished and EK had been living there and would be returning. EK provided a letter written by the Realtor.

In the Realtor's letter, the Realtor confirmed that EK had informed him that she would be out of town at the end of November 2019 in the event there were any prospective buyers seeking a showing. The Realtor recalls the phone call from the tenant as it was the only direct call from a prospective buyer he received for the property. The Realtor indicates that the property was not vacant but that if he did use that term it was meant to reflect that nobody was there at the time and a showing could be done whenever convenient to the prospective buyer. The Realtor went on to state that he can confirm EK had been residing in the rental unit while it was listed for sale.

After EK received the tenant's Application for Dispute Resolution and EK noted the tenant took issue with "immediate occupancy" appearing in the listing she had the Realtor re-write the listing. EK explained that before that she had not placed any significance on those words. Both parties described a subsequent listing that does not provide for "immediate occupancy".

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 Act provides for compensation payable to the tenant under section 51 of the Act.

The compensation the tenant seeks is provided under section 51(2) of the Act. Section 51(2) provides as follows:

- (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.
- (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.

The stated purpose of the 2 Month Notice served to the tenant was that "*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse child; or the parent or child of that individual's spouse).*" This reason corresponds with ending a tenancy under section 49(3) of the Act and provides a landlord, who is an individual, the mechanism to end the tenancy where the landlord intends to occupy the rental unit, as seen below:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[My emphasis underlined]

Having been presented unopposed evidence that the owner of the rental unit is a corporation and the corporation has a sole shareholder, who is EK, the corporate owner would meet the definition of “family corporation” as provided under section 49(1). Accordingly, the tenancy may be ended so that the shareholder of the family corporation may occupy the rental unit, under section 49(4) of the Act, which provides:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

[My emphasis underlined]

The 2 Month Notice that is in the form approved by the Director provides a stated reason that corresponds to section 49(4) as follows:

- *The Landlord is a family corporation and a person owning voting share of the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

The provisions of sections 49(3) and 49(4) are parallel provisions that provide for ending the tenancy so that the owner of the property, who is either an individual or the shareholder of a family corporation, may occupy the rental unit. In this case, the 2 Month Notice served upon the tenant ought to have indicated the tenancy was ending so that the person owning the voting shares of a family corporation may occupy the rental unit. However, I do not consider awarding the tenant compensation equivalent to 12 months of rent due merely because of the error made by the property management company in ticking the box on the 2 Month Notice that corresponds to section 49(3) instead of 49(4), for two reasons. Firstly, the tenant did not seek compensation based on this error. Secondly, under the authority provided to me under section 62 of the Act, I find the reason for ending the tenancy is provided in the Act and the spirit of the Act was met in issuance of the 2 Month Notice. Accordingly, I proceed to consider whether EK, being the shareholder of the family corporation which owns the property, occupied the rental unit for at least six months starting within a reasonable amount of time after

the tenancy ended in deciding whether the tenant is entitled to the compensation he seeks.

In this case, EK put forth considerable evidence to demonstrate she has been occupying the rental unit since mid-October 2019 and that she continues to do so as of the date of the hearing, which is at least six months. The tenant conceded that EK has been occupying the rental unit during this time; however, the tenant is of the position that he remains entitled to compensation because EK listed the property for sale, which the tenant asserts is indicative of the landlord's intention to sell the property, and the property may have been sold within six months had a buyer come forward with the asking price.

In issuing the 2 Month Notice the stated purpose for ending the tenancy was so that the landlord, which I have found above, refers to the landlord's sole shareholder EK, may occupy the rental unit. EK has occupied the rental starting approximately one month after the tenancy ended, which I find is a reasonable amount of time after the tenancy ended, and EK continued to occupy the rental unit for at least six months after that. Therefore, I find the landlord fulfilled the purpose and intention indicated in ending the tenancy.

There is nothing in the Act that prohibits the landlord from listing the property for sale while the landlord is occupying the rental unit and I find the tenant's speculation as to what may have happened or could have happened if a prospective buyer came along and offered the listed price to the landlord is not a basis to award the tenant compensation under section 51(2) of the Act.

In light of all of the above, I dismiss the tenant's application.

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: May 06, 2020

Residential Tenancy Branch