Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, FFT

Introduction

In this dispute, the tenants seek compensation under section 51(2) of the *Residential Tenancy Act* (the "Act") in the amount of $26,500.00 and recovery of the filing fee under section 72 of the Act in the amount of $100.00.

An application for dispute resolution was made on February 26, 2020 and a dispute resolution hearing was held on June 16, 2020. All parties attended and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues with respect to the service of evidence were raised by either party.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Are the tenants entitled to compensation under section 51(2) of the Act?
2. Are the tenants entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

The tenancy began on September 1, 2018 and ended on November 30, 2019, and monthly rent was $2,200.00. A copy of the written Residential Tenancy Agreement was submitted into evidence. The rental unit was, and is, a small, 3-bedroom rancher home.

On October 9, 2019 the landlords served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). A copy of this Notice was submitted into evidence, and it indicates a tenancy end date of December 9, 2019. As per section 53 of the Act, the incorrect date is deemed to be changed to conform with the Act; in this case, the effective end of tenancy date was December 31, 2019.

Page two of the Notice indicates that the reason for the tenancy ending is that the "rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The Notice was served in person on the tenants.

The tenants decided to leave before the tenancy ended and gave the landlords a 10-day notice to end the tenancy, under section 50(1)(a) of the Act. On November 30, 2019 the tenants vacated the rental unit. The next day, the tenants returned to the home only to find contractors doing renovations. The tenants believe that the landlords moved in on December 10 or 15, 2019.

Not long after, in late January 2020, the tenants' daughter found a real estate listing for the house; a copy of the listing was tendered in evidence.

Regarding the Notice, the tenants argued that, despite the Notice saying that the landlords would be living in or occupying the house, the "intent to sell was there." They further argued that the landlords knew full well that the house would be too small to house their growing family. One of the tenants remarked that he "felt blindsided" by the landlords' actions, and, felt that "something wasn't right." Both tenants argued that the landlords did not exercise good faith when they issued the Notice.

In their testimony, the landlords attested that they have lived continuously in the house, just as the Notice stated they would. Further, they testified that they took possession of the property on December 1 but did not move into the house until shortly after.

As for listing the property, the landlords testified that there is no rule or restriction on listing the property, so long as any closing date of a purchase was not before the six months' mark. In other words, because they have lived in the house for six months they have "done nothing wrong" or contrary to the law.

I note, as an aside, that the landlords used December 1, 2019 as the start date in calculating the six-month period, whereas, as the Act says (see below), the six-month period does not start until after the effective date of the Notice. In this case, that would be an effective date of December 31, 2019 for a start date of January 1, 2020.

In rebuttal, the tenants argued that "as long as the house is listed, there's an intent to sell," which, they reiterated, is contrary to giving the Notice in good faith. The tenants added that they felt "duped" by the landlords.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. The applicants claim compensation under section 51(2) of the Act.

First, though, I address the issue of good faith, which the tenants argue is a basis for finding that the landlords breached the Act. Indeed, good faith is a basis on which a notice under section 49(3) must be issued: “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.”

However, we must also turn our attention to section 49(9) of the Act, which states that

> If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
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> (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
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> (b) must vacate the rental unit by that date.

In other words, the issue of good faith only arises if a tenant disputes a notice to end a tenancy under this section. The tenants did not dispute the Notice, but instead accepted it and ended the tenancy early. Indeed, if the tenants were distrustful of the landlords’ intentions, they had the chance to dispute the Notice and challenge the good faith requirement by filing an application for dispute resolution. Yet, they did not.

Turning now to section 51(2), this section states:

> (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
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> (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.

The stated purpose for ending the tenancy was for the landlords to occupy the rental unit. The landlords testified that they took possession of the rental unit on December 1, 2019 and moved into the house shortly thereafter. They further testified that they have lived in the house, uninterrupted, since then and that it is their primary residence. None of these facts were disputed by the tenants.

That the landlords had listed the property for sale is immaterial. As long as the landlords occupy the rental unit – and there is no dispute that they do – then whatever else they did, so long as the Act does not prohibit it, is permitted. This includes listing the property for sale. Also irrelevant are the landlords' pre- or post-Notice intentions, as intent is tied to the issue of good faith. There is, in short, no evidence for me to find that the tenants have not used the rental unit for a period of six months (if one starts counting from December 1, 2019) for the reason as stated in the Notice. Alternatively, if one starts counting from January 1, 2020 (the correct start date) six months have yet to elapse.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim for compensation under section 51 of the Act. Accordingly, their application is dismissed.

Conclusion

I dismiss the tenants' application without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 17, 2020

Residential Tenancy Branch