



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The tenants apply for a monetary award in an amount equivalent to twelve months' rent on the basis that the tenancy had ended as the result of a notice to end tenancy for landlord use of property and that no one appears to be living in the rental unit.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

How did the tenancy end? Did it end pursuant to a two month Notice to End Tenancy pursuant to s. 49(1) of the *Residential Tenancy Act* (the "RTA")? If so, has the landlord failed to occupy the rental unit within a reasonable time following the effective date of the Notice or for a period of at least six months and thereby activate the twelve months' rent penalty imposed by s. 51(2)? If so, were there extenuating circumstances excusing the landlord from the penalty, as provided for in s. 51(3)?

Background and Evidence

The rental unit is a two-bedroom condominium apartment owned by a third party. The landlord named in the tenancy agreement, the respondent MD. was actually a property manager for the owner, who lives in China.

This tenancy started in May 2016. It appears that each year the parties would sign a one year fixed term tenancy agreement that required the tenants to vacate the rental unit at the end of the fixed term. The most recent agreement indicated a fixed term ending August 31, 2019 and requiring the tenants to vacate at that time because “tenancy is based on UBC semester time.” There is no dispute but that is not a lawful basis to require a tenant to vacate a rental unit at the end of a fixed term (see s. 97(2)(a.1) and applicable Regulation).

After the end of the fixed term August 31, 2019 the tenancy continued on a month to month basis with no further written agreement. The monthly rent was \$2040.00, due on the first of each month. The landlord received a \$1000.00 security deposit, which has been returned.

By a text from MD to the tenants dated February 10, 2020 MD informed the tenants that the owner would be coming back to the area May 15, 2020 and she needed the condo back so please consider the text a “three month notice.”

By late March the tenants say they had assessed their rights and obligations only to the extent that they demanded the last month’s rent as compensation. At hearing they said they were, and still are, unaware of the provisions of the *RTA*, dealing with Notices to End Tenancy for landlord use of property and the required form or content of those Notices.

The tenants vacated the property on April 30. As the result of their continued receipt of gas bills for the rental unit, they determined that no gas had been used (for the gas range and the gas fireplace) between June 8 and August 4, 2020. From this they concluded that no one is living in the rental unit. This application was brought October 26, 2020.

MD confirms that the owner is not a relation and therefore not a “close family member” as defined in the *RTA*. He admits the owner has not moved in and says that she has been prevented from doing so due to the current Covid-19 pandemic, restricting her from doing so. He offered no government documentation to substantiate any travel or moving restrictions applicable to the owner. He did not indicate whether the owner was a Canadian citizen or permanent resident and thus exempt from travel restrictions

In response, the tenants say that when they returned the keys at the end of the tenancy April 30, MD indicated the owner was nearby but could not come by to say hello.

Analysis

Following the ending of the last fixed term tenancy in August 2019 the tenancy continued as a month to month tenancy. The landlord could no longer rely on the move-out term contained in expired fixed term tenancy agreements.

Under s. 44 of the *RTA* a tenancy may only end under certain stated conditions. One of them is if the landlord or a close family member intends to occupy the rental unit or “landlord use of property” as it is commonly referred to.

In order to end the tenancy for “landlord use of property” the landlord was required to invoke s. 49(3) of the *RTA* which states that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. That cannot be the case here because MD, the landlord, did not intend to move in and the owner is not his close family member.

In any event, to end a tenancy on that basis a landlord must give notice “in the prescribed form” according to s. 52(e) of the *RTA* and the landlord’s text was not in that form.

A tenancy may also end under s. 44, without any formal notice, if the parties agree in writing. In this case I find that the texts between the parties evince an agreement that this tenancy was to end April 30, 2020. The landlord stated it in his original text and the tenants implicitly accepted it in their following texts, arguing only about payment of the last month’s rent.

The tenants may well have been entitled to simply ignore the text as it was not a proper s. 49 Notice and the owner was not related to the landlord. The fact that the tenants did not inform themselves of their rights and obligations under the *RTA* prior to moving out is a failure they must bear the burden of. There is no allegation that they had been tricked by the landlord or were misled by him into moving out.

Even had this not been the case, the twelve months’ rent penalty claimed by the tenants under s 51(2) of the *RTA* can only be imposed where a tenant has received a s. 49 Notice and they have not received such a Notice, merely a text.

In light of this determination, the remaining issues listed above need not be addressed.

Conclusion

The tenants' 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: January 18, 2021

Residential Tenancy Branch