



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 for Dispute Resolution by the tenants for a monetary order for compensation under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Procedural matter

During the hearing the landlord's agent had been cautioned several times, that if they continued to interrupt the other party or myself that their telephone line would be place on mute. The agent did not following my instructions and as a result the agent telephone line was place on mute until the other party finished presenting their evidence and submissions.

Issue to be Decided

Are the tenants entitled to compensation under the Act?

Background and Evidence

The tenancy began June 2012. Rent in the amount of \$460.00 was payable on the first of each month. The tenancy ended on or about August 15, 2014.

The parties agreed the tenants were served with 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on May 20, 2014.

On August 22, 2014, the parties attended a dispute resolution hearing which was convened in response to an application file by the tenants to cancel the above Notice. However, at the hearing the Arbitrator determined that the tenants have complied with the Notice as they had vacated the rental premises and received the benefit of one month rent.

On August 22, 2014, at the hearing the tenants requested compensation equivalent of 2 months' rent as they did not believe the landlord intended to do what was stated in the Notice. The Arbitrator determined the tenants' application did not include a claim for compensation under section 51(2) of the Act and that matter was not considered.

The tenant testified that all the renters in the residence were being evicted for the same reason. The tenant stated that on the Notices the landlord had checked off two box's. However, the reason for ending the tenancy was clarified by landlord's agent, on July 5, 2014, at another renters hearing. Filed in evidence is a copy of the decision dated July 7, 2014.

The decision of July 7, 2014, reads in part,

"This was an application by a tenant to cancel a landlord use two month Notice to End the Tenancy dated May 20, 2014 with an effective date of July 31, 2014"

...

"The landlord's agent DS testified that the original landlord died on January 29, 2014. DS testified that CC his wife, the executor and the original landlord's daughter was now acting as the landlord. DS testified that the notice was incorrectly completed by his wife in that she checked off sections 49(5), the sale of a unit and 49(3) where a close family member intends to move in. DS testified that he landlord is only relying upon section 49(3) of the Act. DS testified that the granddaughter of the deceased who is also the niece of CC the current landlord, intends to move into the unit on July 31, 2014 in order to "save money on rent." DS testified that his wife CC and her mother already reside on the main floor of the building. He is asking for an Order for Possession effective on August 31, 2014."

[Reproduced as written]

The tenant testified that despite the landlord's claim that they were evicting the tenants so they could move a close family member in to the suites, they were informed just before they vacated that the premises that the residential property had been sold. The tenant stated the landlord did not use the rental unit for the stated purpose and seeks compensation in accordance with the Act.

The landlord's agent testified that the tenants' application on August 22, 2014, was dismissed without leave to reapply. Therefore the tenants are not entitled to make a second application.

The landlord's agent testified that they would have given the tenant a new notice to end the tenancy, for the proper reason; however, the tenant had already disputed the first notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The landlord's agent submitted that the tenants are not entitled to make a second application as their first application was dismissed without leave to reapply.

I have reviewed the decision filed in the landlord's evidence; however, that was only related to the tenants' application to cancel the Notice. The tenants' requested compensation under section 51(2); however, the Arbitrator determined that was not an issue to be considered at the hearing, as it was not part of the tenants' application. Therefore, I find the tenants had the right under the Act, to make their application for compensation pursuant to section 51(2) of the Act as that matter has not been considered nor a decision rendered.

Tenant's compensation: section 49 notice

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

[Emphasis added.]

In this case the landlord indicated two reasons to the end the tenancy in the Notice issued on May 20, 2014. The landlord's agent clarified at the hearing on July 7, 2014 that the notice issued on May 20, 2014, was incorrectly completed by his wife and that they were only relying upon section 49(3) of the Act, where a close family member intends to move in.

Even though the hearing on July 7, 2014, was related to another renter in the same dwelling, I find that it is reasonable that the same mistake was made on the tenant's Notice. As the evidence supports the same person issued the Notices on the same date and the same two reasons were identified. To consider any other reason other than indicated by the landlord's agent at the hearing on July 7, 2014, would be unreasonable. Therefore, I find the Notice issued on May 20, 2014, was issued pursuant to section 49(3) of the Act.

Although the Arbitrator at that the hearing on July 7, 2014, cancelled the notice relating to that renter, as they did not find the notice was issued for the reason stated by the landlord's agent. However, in this case, the Arbitrator on August 22, 2014, determined that the tenants have complied with the Notice issued on May 20, 2014, received the benefit of one month rent and moved out. Therefore, the landlord was bound by the reason stated for issuing the Notice on May 20, 2014, for this tenancy.

In this case the landlord's agent acknowledged the residential property was sold at the end of September 2014 and not used for a close family member as stated. Therefore, I find the landlord did not use the premises for the stated purpose for at least 6 months as required by the Act.

Section 51(2)(b) provides that if a landlord does not comply with section 51 of the Act the landlord must pay the tenants the equivalent of double the monthly rent payable under the tenancy agreement. The legislation does not provide any flexibility on this issue.

Therefore, as I have found the landlord has breached the Act, the tenants are entitled to compensation of double the monthly rent.

Conclusion

Having made the above findings, I must order, pursuant to section 51 and 67 of the Act, that the landlord pays the tenants the sum of **\$970.00**, the equivalent of double the monthly rent (\$460.00) and the \$50.00 filing fee.

The tenants are given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

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: July 6, 2015

Residential Tenancy Branch

