Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>   MNDC, FF

<u>Introduction</u>

The tenants apply to recover the equivalent of two months rent pursuant to s. 51(2) of the *Residential Tenancy Act* (the "*Act*") claiming that the landlord or a close family member failed to occupy the rental unit for at least six months within a reasonable time following the June 30, 2018 effective date of a two Month Notice to End Tenancy.

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.

<u>Issue(s) to be Decided</u>

Has the landlord or a close family member occupied the rental unit for at least six months within a reasonable time after June 30, 2018?

<u>Background and Evidence</u>

The rental unit is a two bedroom condominium apartment. The tenancy started in September 2012. The tenants vacated the rental unit by June 30, 2018. The last monthly rent was $2450.00. All deposit issues have been resolved.

The attending tenant shows that after he left the condominium was offered for sale. He produces a photo of an advertisement/listing from mid August 2018. He suggests the landlord had no intention for her or a close family member moving in.

Mr. R.L., the landlord's brother testified that it was always the landlord's intention that their mother Ms. M.L., who had recently retired from her work on Vancouver Island, would move in and be closer to her parents who resided in a suburb.

He shows that in early July 2018 title to the property was transferred to his mother. He produces her driver's licence showing the rental unit as her address.

He says that the rental unit needed repair after the tenants moved out. In July his family located a contractor and obtained strata approval for the repairs. A carpet was installed in the living room and new flooring laid in the kitchen. As well the unit was painted. The contracting, approval and work took place over July and August and his mother moved in on August 30, 2018. He says she lives there now.

He says that during those two months his mother considered selling the rental unit as the travel to and from her parents suburb was longer than expected. The property was listed for about two weeks in August and then withdrawn from the market.

Analysis

Section 51 (2) provides:

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.**
<div align="center">(my emphasis)</div>

Intention is not a stated factor. The question is whether or not the rental unit was use for the stated purpose within a reasonable time.

In my view it was reasonable for the landlord or her mother to renovate before moving in. I am satisfied that the landlord's mother moved in within a reasonable time after June 30. In any event, they were "occupying" the rental unit during that time even though not residing there. I am satisfied that the landlord's mother continues to occupy the premises.

Conclusion

It has not been shown that there has been a violation of s. 51(2). 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: December 18, 2018

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Residential Tenancy Branch