Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTERLINK REALITY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This matter was convened by teleconference on September 26, 2019, as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act).

The tenants applied a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee paid for this application.

After 48 minutes, I determined it was necessary to adjourn the hearing due to time constraints and in order to hear the landlord's evidence and to deal with evidence issues.

An interim decision was issued on September 30, 2019, which should be read in conjunction with this decision.

The matter was scheduled to reconvene by teleconference on December 10, 2019, to hear the submissions of the landlord and their legal counsel. The parties attended and the hearing continued. The parties at both hearings were provided with a full opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions relating to the tenant's application.

I was provided a considerable amount of evidence including: testimony; written submissions; digital evidence; and photographic evidence relating to the tenant's application; however, with a view to brevity in writing this decision I have only summarized the party's respective positions below.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and to recovery of the filing fee paid for this application?

Background and Evidence

The evidence shows that this tenancy began on December 1, 2017, and ended on December 4, 2018, when the tenants vacated the rental unit.

The tenants submitted that they received a Two Month Notice to vacate the rental unit and chose to vacate pursuant to that Notice. The Notice to which the tenants referred was entered into evidence. This Notice was a one-page letter-styled document, dated September 26, 2018, addressed to “all 3 current tenants” living at the rental unit.

The letter notified the tenants that the one-year lease will expire on November 30, 2018, that the landlord did not want to renew the lease and that the “landlord wants to repossess the premise”.

The letter further informed the tenants, in part, to vacate the rental unit on November 30, 2018, by 1:00 p.m.

The letter further stated that if the tenants and their belongings were not gone by the date, they would be removed by “sheriff/bailiff through court order at tenants’ own expense”.

The letter was not signed but contained the name of the licensed property manager for the named corporate landlord in this application as being the sender of the letter.

The tenants submitted that they filed for an earlier dispute resolution on their application for one’s month’s compensation for receiving the Two Month Notice and for a return of their security deposit. I note that as this matter was referenced by the tenants, I reviewed the earlier decision of another arbitrator. In that decision of May 14, 2019, the arbitrator noted that the tenants confirmed the Notice, the letter of September 26, 2018, was not in the “right form”.

The other arbitrator in making their decision found that the landlord fully intended to end the tenancy with the service of the letter and found that the landlord tried to avoid paying the tenants the amount required when a “two month notice is given”. The other arbitrator found it appropriate to award the tenants compensation under section 51(1) of the Act, which was the equivalent of one month’s rent payable under the tenancy agreement, though they had not received the proper form required by the Act.

In this application, the tenants’ monetary claim is $32,450.00, which is the equivalent of 11 months’ rent of $2,950.00.

In support of their application, the tenants submitted that the landlord intended to reoccupy the rental unit; however, the rental unit stayed vacant until June 2019, when it was re-rented. The tenants submitted further that they were not given the right of first refusal to move back into the rental unit. The tenants submitted further that there were no permits or renovations planned or presented for their eviction.

The tenants submitted that there were notices placed on the front door of the rental unit after they vacated, which were left by the building manager, which shows the rental unit was not occupied. The tenants said that a former neighbour notified them that the rental unit was being shown to prospective tenants.

The tenants’ relevant evidence included, but was not limited to, the written tenancy agreement, the previous dispute resolution decision, and a Strata Form K agreement, signed by another tenant of the rental unit for a tenancy commencing on June 1, 2019.

Landlord’s agents’ response-

The landlord’s agent at the hearing, through his legal counsel, submitted that his client only represented the owner of the rental unit as a property manager and was following through on the owner’s request to issue a notice to the tenants.

The legal counsel argued that after April 1, 2019, the landlord’s agent ceased any representation of or contact from the owner. The legal counsel argued that the property manager was in no way responsible for the actions of the owner and had no way to control whether the owner occupied the rental unit.

The legal counsel argued that if the Act was breached in this matter, it was the owner and not the property manager here.

The legal counsel also submitted that if they were asked by one of their clients to evict a tenant, they would do so on the proper form, not through a letter.

The legal counsel contended that the tenants chose to act on the letter; however, they were not compelled to vacate the rental unit.

Analysis

In this case, the tenants as claimants had the burden to prove their monetary claim against the landlord, on a balance of probabilities.

In this case, I do not accept that the landlord's agent is free from responsibility in this matter, as they were the listed landlord on the written tenancy agreement, and they issued the letter of September 26, 2018 to the tenants. I therefore find they are the landlord and are the appropriate party to be listed in this application by the tenants.

Section 49 of the Act provides that a landlord may end a tenancy for landlord's use for multiple reasons. Included in those reasons is when a landlord or a close family member of the landlord intends in good faith to occupy the rental unit, which I conclude is the position of the tenants in this case.

When a landlord seeks to end a tenancy for any of the reasons listed in this section of the Act, the landlord is required to serve a notice which complies with section 52 as to form and content of the notice to end the tenancy.

As to the tenants' claim for compensation, Section 51(2) provides that if 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 if 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 tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

I find the tenants received a letter style document telling them to vacate the rental unit; however, this document did not comply with the form and content of a notice to end the tenancy. For instance, the letter was not on the Residential Tenancy Branch (RTB) form and did not state the grounds for ending the tenancy recognized or allowed under

section 49 of the Act. A landlord seeking to "repossess" the rental unit is not a reason provided for in the Act.

As such, as the letter received by the tenants did not comply with the Act, the tenants were under no obligation to vacate and additionally, did not have to file an application seeking to cancel the letter.

I find rather it was the tenants who chose to vacate the rental unit without first seeking what their legal rights may be.

I therefore find the tenants are not entitled to receive the equivalent of 11 months' monthly rent as they did not receive a notice which complied with section 49 of the Act. I presume the tenants sought the equivalent of 11 months' rent instead of 12 months, as they have previously been awarded one month's compensation.

I additionally find I am not bound by the earlier decision of another arbitrator, as that decision dealt with a separate claim by the tenants.

For this reason, I dismiss the tenants' application seeking the equivalent of 11 months' rent.

I note that I would still make the decision to dismiss the tenants' application as there was no proof by the tenants that the rental unit was not used for the reason listed in the one-page letter for at least 6 months' duration. The effective date listed on the non-conforming letter was November 30, 2018, and the rental unit was not rented out until the 7th month thereafter, or June 2019, according to the tenants' evidence.

As I have dismissed the tenants' application, I decline to award them recovery of their filing fee.

Conclusion

The tenants' application is dismissed, without leave to reapply.

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 30, 2019

Residential Tenancy Branch