Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT FFT

Introduction

In this dispute, the tenant seeks $18,600.00 in compensation under section 51(2) of the *Residential Tenancy Act* (the "Act") and recovery of the $100.00 filing fee under section 72 of the Act.

The tenant filed an application for dispute resolution on May 16, 2020 and a dispute resolution hearing was held on September 18, 2020. The tenant, the landlords, and legal counsel for one of the landlords, attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the tenant entitled to compensation as claimed?

2. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

By way of background, the tenancy in this dispute commenced on May 1, 2018 and ended on May 31, 2019. Monthly rent was $1,550.00 and the tenant paid a security deposit of $775.00. A copy of the written residential tenancy was submitted into evidence.

The landlord had put the property (a duplex, one of which was the rental unit) up for sale on March 6, 2019 and on March 10, 2019 the property was sold. On March 28, 2019, the landlord (R.N.) served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice").

The Notice, a copy of which was submitted into evidence, indicated that the tenancy would end effective May 31, 2019.

On page two of the Notice it is indicated that the tenancy was ending because

> All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

After receiving the Notice, the tenant found a new place to live and signed a new tenancy agreement on April 4, 2019. She mentioned, however, that she was aware of the property's pending listing on the market, and thus she had started searching sometime previously.

On April 13, 2020, after she had found a new place, signed a tenancy agreement for that new place, and, had paid a security deposit, the purchaser (the second named landlord N.R.) approached the tenant and advised her there had been an error in respect of the Notice. The landlord had, in fact, only needed possession of one of the duplexes, the area above the garage. And, that the rental unit, in which the tenant had lived, did not need to be vacated.

However, the tenant testified that at the point she was already committed to moving into her new place come June 1, 2019. The tenant then vacated the rental unit on May 31, 2019.

The landlords provided testimony regarding the error involving the Notice, and legal counsel for the landlord made some submissions regarding the dispute. However, given the evidence provided by the tenant above, and based on my analysis, below, I will not reproduce that testimony or submissions of counsel further, as it has no bearing or effect on the outcome of this dispute.

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.

In this dispute, the tenant seeks compensation under section 51(2) of the Act which states the following:

> (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
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> (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.

While both parties did not appear to dispute that the Notice was issued in error, the tenant did not, in fact, provide any evidence, oral or documentary, that the landlord did not end up occupying the rental unit either, (a) after a reasonable period after the effective date of the Notice or, in the alternative, that (b) the landlord did not in fact use the rental unit for the stated purpose of occupying the rental unit. There was, in short, no evidence as to what happened after the tenant left.

There is, in short, no evidence for me to conclude that the purchasing landlord did not comply with section 49(5) of the Act, which is the section under which the Notice was issued. Rather, the evidence (or lack thereof) is silent on whether the landlord ended up occupying the rental unit. The landlord may have advised the tenant that he did not need the rental unit to be vacant, but there is nothing to find that the landlord did not in fact end up occupying the rental unit. If there is such evidence of this, the tenant did not speak to it nor did they refer me to any such evidence during the hearing.

To reiterate, it is the tenant’s obligation to prove a breach which may lead to the awarding of compensation.

Taking into careful deliberation and consideration the oral testimony and documentary evidence presented before me, and applying the Act to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving a claim for compensation under section 51(2) of the Act. While she may very well have suffered a loss as a result of the landlords' error, such loss is not from a breach of section 51 of the Act.

Whether the tenant is entitled to other compensation, however, would be subject to a separate application and I make no findings of fact or law on that avenue of relief.

Finally, in the alternative, if one accepts that the landlords did not carefully read the *TENANT OCCUPIED PROPERTY – BUYERS NOTICE TO SELLER FOR VACANT POSSESSION* – which plainly states that the only part of the property for which a notice to vacate is to be issued is the "suite above garage" – and subsequently issued the Notice in error, then it follows that the Notice was invalid from the start. And, thus, the tenant was never required by law to comply with the Notice; this, of course, is a rather moot point, given that she accepted the Notice on its face and took steps to vacate.

Conclusion

I dismiss the tenant's application without leave to reapply.

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

Dated: September 21, 2020

Residential Tenancy Branch