



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for her application from the landlord(s) pursuant to section 72.

All three parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that she received the former landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) by mail on January 26, 2010. The former landlord (the landlord) and the current landlord (the purchaser) both testified that they have received the tenant's dispute resolution hearing package sent by registered mail on March 16, 2011. I am satisfied that the above documents have been served to one another.

At the hearing, the landlord and the purchaser testified that they have received the tenant's evidence package. The tenant said that she has not received any written evidence from either the landlord or the purchaser. Both the landlord and the purchaser sent late written evidence to the Residential Tenancy Branch (RTB), but they and their real estate agents who assisted them with this hearing did not send a copy of this evidence to the tenant and did not know that they had to do so.

The tenant said that she received what appears to be a similar evidence package from the purchaser with respect to the tenant's previous application for dispute resolution against only the purchaser. Dispute Resolution Officer (DRO) XXXX dismissed the tenant's previous application with leave to reapply on February 17, 2011, because it appeared to him that both the landlord and the purchaser should be notified of the tenant's application for dispute resolution. I accepted only those portions of written evidence provided by the landlord and purchaser that the tenant acknowledged having received in the course of the hearing before DRO XXXXX in February 2011. It was possible to continue with this hearing as the key document in this matter proved to be a

Contract of Purchase and Sale entered into written evidence by the tenant. I also allowed the landlord and the purchaser and their respective witnesses/real estate agents to enter oral evidence regarding the materials they sent to the RTB.

Issues(s) to be Decided

Is the tenant entitled to a monetary award of double her monthly rent for the failure of the purchaser to occupy the rental unit for the purpose cited in the landlord's Notice? Is the tenant entitled to recover her filing fee for this application from the landlord(s)? Is the tenant entitled to any other monetary award arising out of this tenancy?

Background and Evidence

This tenancy commenced as a fixed term tenancy on December 15, 2006. At the expiration of the original fixed term, the tenancy continued as a month-to-month tenancy. Monthly rent by the end of this tenancy was set at \$1,404.00, payable on the 15th of the month. The tenant testified that she has received a return of her \$657.00 security deposit paid on December 1, 2006.

The tenant vacated the rental unit in April 2010, after receiving the landlord's Notice. In the Notice, the landlord cited the following reason for ending her tenancy:

All of the conditions for 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.

The tenant applied under subsection 51(2)(b) of the *Act* for a monetary award equal to two month's rent because the landlord did not take steps toward the purpose for which the Notice was given and the unit was not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the Notice. The tenant applied for a monetary award of \$2,949.00. This amount included \$2,808.00 for double her monthly rent at the end of the tenancy, \$100.00 to recover the filing fees for her two applications for dispute resolution, and \$41.00 for delivery and administrative costs she incurred.

The tenant entered into written evidence a copy of the January 7, 2010 Contract of Purchase and Sale between the landlord and the purchaser. The landlord and her witness, her realtor, testified that Section 5 of that contract indicated that the purchaser required vacant possession of the rental unit. They testified that this requirement in the Contract prompted the landlord to issue the Notice. Section 5 of the Contract reads as follows:

5. POSSESSION: The Buyer will have vacant possession of the Property at 12 NOON pm on March 2nd, yr 2010 (Possession Date) OR, subject to the following existing tenancies, if any:

VACANT OCCUPANCY.

The purchaser and her agent testified that neither the purchaser nor any close member of her family ever had any intention of occupying the rental unit. They said that had the landlord been unable to provide vacant possession of the premises, the purchaser may not have continued with the purchase of the property. They testified that they never provided any written request to the landlord that the rental unit was needed to accommodate either the purchaser or a close member of her family.

Analysis

Section 49(5) of the Act establishes the test whereby a landlord may end a tenancy for landlord use of the property under the following circumstances:

49(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;...

In order to issue this type of notice to end a tenancy, the purchaser must ask the landlord in writing to give notice because the purchaser or a close family member intends to occupy the rental unit. I find that the landlord and her realtor interpreted the provision in the Contract of Purchase and Sale and emails from the purchaser's realtor to mean that the purchaser needed vacant possession of the rental unit so that she or a close family member could occupy the rental unit. However, based on the written and oral evidence presented, I find that the landlord has insufficient evidence to demonstrate that the purchaser made a written request to end this tenancy so that the purchaser or a close family member could occupy the rental unit.

In the absence of anything in writing from the purchaser or her agent requesting an end to this tenancy so that the purchaser or her close family member could move into the rental unit, I find that the tenant is entitled to a monetary award in accordance with section 51(2) of the *Act* of \$2,808.00, double the monthly rent payable under the tenancy agreement. Under these circumstances, I find that the landlord is solely responsible for this payment.

Since the tenant has been successful in this application, I allow her to recover her \$50.00 filing fee for this application from the landlord. I dismiss the tenant's applications for recovery of her filing fee for her previous application and for recovery of her administrative costs associated with her application for dispute resolution, as I find that these items are not recoverable in the context of her present application.

Conclusion

I issue a monetary Order in the tenant's favour requiring the landlord to pay the tenant \$2,858.00 in total. This allows the tenant to recover double her monthly rent from the landlord in accordance with section 51(2) of the *Act* and her filing fee for this application pursuant to section 72 of the *Act*.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.