



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes

FF MNDC O OLC

Introduction

This proceeding is pursuant to an original application by the tenant seeking a monetary order pursuant to Section 51(2) of the *Residential Tenancy Act* (the Act) and recovery of the filing fee from the respondent. This Review Hearing was convened pursuant to a successful application for Review by the named respondent landlord/purchaser dated December 21, 2016. The respondent provided evidence for the Review application they were not able to attend the hearing. The respondent provided credible evidence they were not the purchaser, and also evidence as to the true purchaser.

Both parties participated in the hearing. The original respondent (SS) was represented by their agent. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed pursuant to Section 51(2) of the Act?

Background and Evidence

The undisputed evidence is as follows. The tenancy began September 1, 2014 and has ended. The payable rent was \$2400.00 per month. On November 26, 2015 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use (the Notice to End or Notice). The Notice indicated that the property was going to be occupied by the landlord or a close family member. But as well, the Notice was further accompanied by a *Buyer's Notice to Seller for Vacant Possession of a Tenant Occupied Property* (Buyer's Notice to Seller) signed by the respondent as the purchaser or "Buyer". On confirmation of a sale of the rental unit, the landlord's Notice, and the ancillary Buyer's Notice to Seller, it seemed reasonable to the tenant that the purchaser/ buyer would, in good faith, be occupying the rental unit. Therefore the tenant accepted the Notice and vacated the rental unit in accordance with it in December 2015.

The respondent's agent (the respondent) provided that they were not the ultimate buyer of the rental unit, but they had indeed signed the Buyer's Notice to Seller as the buyer on the same date as the 2 Month Notice of November 26, 2015 was issued. The respondent verified the

Buyer's Notice to Seller required a good faith intention to occupy the subject unit of the sale and requested the landlord of the tenancy to provide the respective Notice under the Act so as to end the tenancy and for the tenants to vacate the unit. The respondent testified that following the issuance of the 2 Month Notice some "litigation" ensued between them and the seller of the rental unit and the result was that their son, AS, became the buyer and eventual purchaser. The respondent testified that AS did not occupy the rental unit as they had no such need and subsequently has sold the unit. They argued the eventual purchaser, AS, did not originally express the good faith intention to occupy the unit therefore should not be liable for a penalty associated with not accomplishing the stated purpose of the 2 Month Notice or pursuant to the Act.

The respondent confirmed that after the tenant vacated the rental unit remained vacant as the purchaser did not require its occupancy; and, in July 2016 the residential property was placed for sale and has been sold.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On preponderance of all the evidence in this proceeding, I accept the *landlord* of the tenancy completed and issued the tenant a Notice to End to reflect the circumstances presented to them by the buyer of the rental unit. Pursuant to **Section 68(1)** of the Act I find it reasonable that the Notice to End as accompanied by the Buyer's Notice to Seller complies with **Section 52** of the Act and that it was validly issued pursuant to **Section 49(5)** of the Act. The tenant accepted the landlord's Notice to End and vacated in accordance with the buyer's request to accommodate occupancy of their purchase.

I accept the evidence of both parties. I find the evidence is that respondent, SS, signed the Buyer's Notice to Seller as buyer and purchaser and had a legal right to request the landlord issue the tenant a Notice to End the tenancy. I accept the respondent's evidence they transferred their buyer's/purchase rights and obligations to their son who then became the eventual sole purchaser. The respondent has provided credible evidence of the name of the purchaser of the unit by way of the Land Title transfer documentation. I further find the eventual purchaser of the rental unit assumed the initial buyer's legal obligations toward the tenant. As a result, I find it appropriate the eventual purchaser of the rental unit be additionally reflected in the style of cause as co-respondent to this matter and I so amend the style of cause.

Section 51 of the Act, in relevant part to this matter, states as follows (**emphasis mine**)

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.

I find the respondent as amended clearly did not follow through with the stated intention to occupy the rental unit as required and contemplated by the Act. As a result, the tenant is entitled to the compensation prescribed by **Section 51(2)** of the Act, which is double the monthly rent payable under the tenancy agreement in the sum amount of \$4800.00. The tenant is also entitled to their filing fee, for a resulting total award to the tenant in the amount of **\$4900.00**.

The style of cause has been amended. The original Decision and Order rendered November 14, 2016 are set aside.

I grant the tenant a new **Monetary Order** under **Section 67** of the Act for the amount of **\$4900.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted.

This Decision is final and binding on both parties.

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: January 24, 2017

Residential Tenancy Branch