



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

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- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties acknowledge receipt of the others documentation. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

This was a highly contentious hearing. The relationship between the parties is an acrimonious one. All participants were cautioned numerous times about their behavior and to not interrupt one another. At one point the parties engaged in an argument with one another despite my cautions. The hearing did proceed and complete in the allotted time.

Preliminary Issue

The tenants testified that they served notice of this hearing to the two named landlords as well as the two company names as they purchased the property. The tenants testified that they served all parties as they were unsure of where the liability laid. The tenants felt the landlord was ultimately responsible as they had issued the notice. BB called into the teleconference representing the two companies listed as a respondent. BB testified that he was always clear to PR and JN that the home was to be demolished and a new home built in its place. BB testified that he is a home builder and that's his only purpose for buying homes. BB denied PR's allegation that through the realtors, he advised that the owner would be occupying the home. BB testified that it was PR who

kept offering to close the sale of the home at an earlier date. BB testified that he was not in any rush to obtain the property but PR was insistent that she would “take care of the tenants’ and that the property would be empty when he took possession.

BB provided documentation that he states clearly shows no misrepresentation by the purchaser that the home would be occupied by them and that the property was to be demolished and a new home built in its place. The tenant confirmed that they received that documentation from BB. PR testified that she issued the notice at the request of BB’s realtor, however she was unable to provide sufficient evidence to support that claim. Based on all of the above I find that the appropriate individuals that should be subjects of this hearing are PR and JN. PR advised that she represents the interest of herself and JN. This decision will address and refer to PR and JN. The hearing proceeded and concluded on this basis.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of two months’ rent as claimed?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on August 1, 2012 and ended on April 2, 2016. The monthly rent was \$2300.00. At the outset of the tenancy the tenants provided a security deposit of \$1150.00 and pet deposit of \$1150.00 which has been returned to them.

The tenant gave the following testimony:

On February 26, 2016 the landlord served the tenant with a two month Notice to End Tenancy for Landlords’ Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by May 1, 2016. The ground for the Notice was that:

“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 moved out of the rental unit on April 2, 2016 but later discovered that the purchaser did not move into the rental unit; and demolished the home on August 16, 2016. The tenants request that they be given two months’ rent as compensation. The tenants also testified that they be given an additional \$3500.00 for increased rental costs that have incurred. The tenants testified that they fully acknowledge and accept

that the tenancy was going to come to an end whether the landlord or purchaser served them a notice but contend that if the landlord had not given the notice under false pretenses and the purchaser had to go through the process, they could have lived in the unit for another 4-6 months and saved those increased rental costs. The tenants also request the recovery of the \$100.00 filing fee for a total monetary claim of \$8200.00.

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The landlord gave the following testimony:

The landlord testified she was only doing what the purchaser had asked her and through the direction of the realtors. PR testified that there were no attempts to mislead the tenants. PR testified that if the tenants are awarded two months' rent as compensation they should not be entitled to anything further. The landlord testified that their rent was the same throughout their tenancy and that the housing and rental market have gone up over the years and that they should have realized that they would have to pay more when they moved.

Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (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.

The applicants seek payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. In the landlords own testimony she acknowledges and concedes that the property was not used for the stated purpose for six months. I accept the landlords' testimony that she meant no malice, however that does not relieve her of her responsibilities and obligations under the Act. The landlord testified that she was carrying out the purchasers wish however

she did not provide sufficient evidence to support that position. Based on all of the above, and the on balance of probabilities, I find that the tenant has been successful in their application to a limited extent. I find that the tenants are entitled to compensation under Section 51 of the Act, but do not find that the tenants are entitled to an additional \$3500.00 in higher rent costs. Section 51 of the Act is the compensation remedy provided under the Act. The tenants request for \$3500.00 is essentially an attempt to obtain compensation on top of compensation; accordingly I dismiss the tenants request for \$3500.00 for increased rental payments.

The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. I am satisfied that the tenants are entitled to \$2300.00 x 2 months = \$4600.00 plus the recovery of the \$100.00 filing fee for a total award of \$4700.00.

Conclusion

The tenants have established a claim for \$4700.00. I grant the tenants an order under section 67 for the balance due of \$4700.00. This order may be filed in the Small Claims Court and enforced as an order 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*.

Dated: May 29, 2017

Residential Tenancy Branch