



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNL, MNDC, OLC

Introduction

This hearing was convened by way of conference call in response to the Tenants' Application for Dispute Resolution (the "Application") filed on June 5, 2017 for the following issues:

- to cancel a 2 Month Notice to End Tenancy for the Landlord's Use of the Property (the "2 Month Notice") dated March 10, 2017;
- for more time to cancel the 2 Month Notice;
- for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and,
- for the purchasers of the rental unit to comply with the Act, regulation or tenancy agreement.

An agent for the Tenants and the female purchaser of the rental appeared for the hearing and provided affirmed testimony. The purchasers confirmed receipt of the Tenants' Application and the parties acknowledged receipt of each other's documentary evidence served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to provide testimony, present documentary evidence, make submission to me, and to cross examine the other party on the evidence provided.

Preliminary Issues

At the start of the hearing, the Tenants' agent confirmed that the Tenants had vacated the rental unit and the tenancy had ended. Therefore, the only matter that was to be determined in this hearing was the Tenants' monetary claim. As a result, I dismissed the

Tenants' Application to cancel the 2 Month Notice and for more time to cancel the 2 Month Notice as these issues are now moot.

During the hearing, the Tenants' agent also requested to recover the filing fee from the purchasers for having to file the Application.

Issue(s) to be Decided

Are the Tenants entitled to two months of rent as compensation under the 2 Month Notice because the purchasers did not take occupation of the rental unit which was the reason for ending the tenancy?

Background and Evidence

The parties agreed that the Tenants had a tenancy to rent this condominium with the landlords which started on January 15, 2016 for a fixed term of one year which then continued on a month to month basis thereafter. Rent under the signed tenancy agreement was \$1,600.00 payable on the 15th day of each month which was then increased to \$1,646.00 after the fixed term ended.

The parties confirmed that the Tenants were served with the 2 Month Notice by the landlords by registered mail which was received on March 14, 2017. The 2 Month Notice was provided into evidence and shows a vacancy date of May 14, 2017. The reason for ending the tenancy indicated on the 2 Month Notice was that the rental unit had been sold and the purchasers had asked the landlords to serve the 2 Month Notice because the purchasers wanted to move into the rental unit.

The Tenants' agent explained that on April 27, 2017, pursuant to the provisions under the 2 Month Notice, the Tenants provided the landlords with a 10 day written notice to vacate the rental unit earlier on May 7, 2017. This was the date the tenancy ended.

The Tenants' agent stated that the Tenants then noticed that at the beginning of May 2017, the purchasers had advertised the rental unit for re-rental on Craigslist for a monthly rent charge of \$2,100.00. This advertisement was provided into evidence.

The Tenants' agent stated that on May 6, 2017 the Tenants were then contacted by the purchasers who asked them whether they wanted to enter into a new tenancy for the rental unit on a monthly charge of \$1,800.00. The Tenants' agent explained that the Tenants did not respond to the purchasers' request because they were already in the

process of moving out of the rental unit and had already committed to another tenancy for May 1, 2017.

The Tenants' agent confirmed that the Tenants had received the one month compensation payable to them but were now claiming the additional 2 months' rent as compensation for ending the tenancy in bad faith.

The owner testified that after they moved to Canada, they got into financial problems and had to sell their home and purchase the rental unit at some point in March 2017. However, it was only after they bought the rental unit, did the purchasers realise that pursuant to the strata by laws of the condominium, they were unable to occupy it because there was a restriction of two people only that could reside in the rental unit and the purchasers had a family of three. Therefore, they were unable to take occupancy of it. The purchasers provided extensive documents into evidence showing how they arrived into Canada as well as the strata by-laws indicating the prohibition.

When the owner was asked why she had placed the rental unit on the rental market at a higher rate of \$2,100.00 or offered it back to the Tenants to rent at a higher rate of \$1,800.00, the purchaser explained that the rent payable by the Tenants was not sufficient to cover their mortgage payment and they wanted to re-rent it out as quickly and efficiently as possible.

Analysis

A 2 Month Notice is intended to be given to a tenant in good faith. In this case, based on the undisputed evidence provided by the Tenants' agent, I find the Tenants accepted the 2 Month Notice in good faith on the understanding that the rental unit had been sold and the purchasers were intending to move into the rental unit.

I accept the evidence that the Tenants have already obtained the one month compensation payable to them as provided for by Section 51(1) of the Act after the 2 Month Notice was served.

However, Section 51(2) of the Act states:

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.*

[Reproduced as written and emphasis added in bold]

I accept the undisputed evidence that the purchasers of the rental unit put it back onto the rental market and I find this is sufficient evidence to show the purchasers had not used the rental unit for the use indicated on the 2 Month Notice.

In this case, there was a reasonable requirement that the purchasers should have investigated and researched the limitations of occupancy of the rental unit before they purchased it. The purchasers' failure to do this does not now mean that the Tenants are not eligible for the 2 months of compensation.

Also, I find the explanation that the purchasers sought to reinstate or start a new tenancy with the Tenants or advertised the rental unit for a much higher amount in order to cover the purchasers' mortgage payment, is also insufficient reason for the purchasers to escape the compensation requirements of the Act. Neither does the Act stipulate that good faith is a requirement in determining whether the Tenants are entitled to the two months compensation.

Therefore, pursuant to Section 51(2) of the Act, the purchasers must now pay double the monthly rent payable under the tenancy agreement. Consequently, the total amount awarded to the Tenants for this portion of the claim is \$3,292.00 (\$1,646.00 x 2).

Section 72(1) of the Act gives me the authority to award recovery of a filing fee. As the Tenants have been successful in their Application, I also grant the Tenants their \$100.00 filing fee. Therefore, the total amount awarded to the Tenants is \$3,392.00 (\$3,292.00 + \$100.00).

The Tenants are issued with a Monetary Order for this amount. Copies of this Order are attached to the Tenants' copy of this Decision.

This Order must be served on the purchasers and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the purchasers fail to make payment in accordance with the Tenants' written instructions. The purchasers may also be liable for any enforcement costs incurred by the Tenants.

Conclusion

The purchasers of the rental unit have breached the Act by not using the rental unit for the reason on which the tenancy was ended under the 2 Month Notice. Therefore, I grant the Tenants monetary compensation payable to them under the Act for two months of rent, as well as the filing fee, for a total of \$3,392.00.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 03, 2017

Residential Tenancy Branch