



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MT, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the ‘Application’) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking more time to make an Application to cancel a Two Month Notice to End Tenancy for Landlord’s Use (the “Two Month Notice”), cancellation of the Two Month Notice, an order for the Landlord to comply with the Act, regulation, or tenancy agreement, a Monetary Order for double their monthly rent pursuant to section 51 of the Act, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants, both of whom provided affirmed testimony. The Respondents, who are the former landlord (the “former Landlord”) and the purchaser of the property (the “Purchaser”), did not attend. The Tenants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondents must be served with a copy of the Application and Notice of Hearing. As the Respondents did not attend the hearing, I confirmed service of documents as explained below.

The Tenants testified that the Application and Notice of Hearing were sent to the former Landlord at his address for doing business as a landlord on September 11, 2017, by registered mail and provided me with the registered mail tracking number. With the Tenants’ permission, I logged into the mail service providers website and verified that the registered mail was sent as described but returned to sender. However, Residential Tenancy Policy Guideline (the “Policy Guideline”) # 12 states that where a document is served by registered mail, the refusal of the party to accept or pick-up the registered mail does not override the deeming provision. As a result, I find that the former Landlord was deemed served with the Application and the Notice of Hearing on September 16, 2017, five days after the registered mail was sent.

The Tenants testified that the Application and Notice of Hearing were also sent to the Purchaser at the rental unit address on September 11, 2017, by registered mail and provided me with the registered mail tracking number. With the Tenants' permission, I logged into the mail service providers website and verified that the registered mail was picked up and signed for on September 13, 2017. As a result, I find that the Purchaser was served with the Application and the Notice of Hearing on September 13, 2017.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenants, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

In their Application, the Tenants listed both the former Landlord and the Purchaser as Respondents. However, the Tenants are seeking compensation pursuant to section 51 of the *Act* as they argue that the purchaser failed to either take steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. Based on the above, any Monetary Order issued to the Tenants pursuant to section 51 of the *Act* will only be issued in the name of the Purchaser only.

Preliminary Matter #2

At the outset of the hearing the Tenants withdrew their claims for more time to make an application to dispute a Notice to End Tenancy and cancellation of the Two Month Notice as they vacated the rental unit on October 3, 2016. As a result, the hearing proceeded based on their claim for an order for the former Landlord, or the Purchaser, as applicable, to comply with the *Act*, regulation, or tenancy agreement and provide them with compensation in the amount of two months' rent pursuant to sections 51 and 67 of the *Act*.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order for two months' rent pursuant to sections 51 and 67 of the *Act*?

Background and Evidence

The Tenants testified that they were residing in a rental unit owned by the former Landlord, which sold to the Purchaser, and as a result, they were served with a Two Month Notice on July 20, 2016, as the Purchaser or their close family member intended to occupy the rental unit. The Tenants stated that they subsequently moved out of the property on October 3, 2016, in compliance with the Two Month Notice.

The Two Month Notice in the documentary evidence before me, dated July 20, 2016, has an effective vacancy date of October 10, 2016, and states that all the conditions for sale of the rental unit have been satisfied and the Purchaser has asked the landlord, in writing, to give the notice because the Purchaser or a close family member intends in good faith to occupy the rental unit.

The Tenants stated that after they vacated the rental unit, which was a single family home, instead of occupying it, the Purchaser immediately renovated the property. The Tenants stated that they found out about the renovations as the Purchaser invited them into the property several days after they moved out when they attended the property to pick-up some belongings. The Tenants stated that they also witnessed work vehicles, workers and large refuse bins on the property for many months. Further to this, the Tenants stated that the property was re-sold August 5, 2017, and that an advertisement was posted online for a basement suite in the home on September 20, 2017.

The Tenants testified that they are certain no one resided in the property until it was re-sold as they frequently drove by and the home looked empty of furnishings and there were never any lights on or vehicles parked in the driveway at night. The Tenants also testified that the Purchaser contacted them by phone after receiving the Application and Notice of Hearing and confirmed that they never moved into the property.

Based on the above, the Tenants argued that the Purchaser and their close family members neither occupied the property nor intended to occupy the property at the time the Two Month Notice was served and therefore it was issued in bad faith. As a result, they sought compensation in the amount of \$2,800.00 from the Purchaser, which is the equivalent of two months' rent pursuant to section 51 of the *Act*.

Neither the Landlord nor the Purchaser attended the hearing to provide evidence or testimony for my consideration.

Analysis

Section 51 of the *Act* states that 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 if they serve a Two Month Notice and 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 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.

Policy Guideline #2 also states that if the good faith intent of a landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they say on the Notice to End Tenancy. In this case it is the Purchaser who requested that the Two Month Notice be served, and as a result, I find that the burden of proof to demonstrate that they truly intended to do what they said on the Two Month Notice falls on the Purchaser.

As the Purchaser did not attend the hearing to provide any evidence or testimony for my consideration, I accept the undisputed testimony of the Tenants that neither the Purchaser nor their close family members ever occupied the property. Based on the undisputed testimony before me for consideration, I also find that the Purchaser never intended to occupy the property or have their close family members occupy the property and instead intended renovated for resale. As a result, I find that the Purchaser had the Landlord serve the Two Month Notice in bad faith. I also find that the Purchaser did not either take steps to accomplish the stated purpose for ending the tenancy or use it for the stated purpose for at least six months beginning within a reasonable period after the effective date of the Two Month Notice. As a result, I find that the Tenants are entitled to \$2,800.00.00 pursuant to section 51(2) of the *Act*. As the Tenants were successful in their Application, I also find that they are entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Based on the above, and pursuant to section 67 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of \$2900.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$2,900.00. The Tenants are provided with this Order in the above terms and the Respondent, who is the Purchaser, must be served with **this Order** as soon as possible. Should the Respondent fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: April 30, 2018

Residential Tenancy Branch