



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The tenants apply to recover the equivalent of two months' rent pursuant to s. 51 of the *Residential Tenancy Act* (the "*Act*") and for damages for the respondent purchasers' failure to carry out the stated purpose contained in a two month Notice to End Tenancy for landlord use of property.

The respondent Mr. A.N. did not attend the hearing and appears to be merely a contact person for the respondents, the new owners of the property. He is not a landlord within the definition provided in the *Act* and is not a proper respondent in this proceeding.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Are the respondents subject to the s. 51 penalty? Are they responsible for damages above and beyond the penalty? Is this matter governed by recent amendments to the *Act* increasing the penalty?

Background and Evidence

The rental unit is a three bedroom home which the tenants began renting from the prior owners in February 2016. The rent was \$1850.00 per month. All security deposit issues have been resolved.

By a two month Notice to End Tenancy dated February 21, 2018, the prior owners, then the tenants' landlords, purported to end the tenancy on April 30, 2018. The grounds for the Notice were that the landlords had sold the rental unit and the purchasers, the respondents in this application, had given written notice that they intended to occupy the rental unit.

Under s. 49 of the *Act*, such grounds are permitted grounds for ending a tenancy.

Mr. R.C. testifies that the tenants complied with the Notice and gave up possession of the rental unit on April 30. He says that on the same day he came across an advertisement in Craigslist, posted April 30, offering the premises for a rent of \$2500.00 per month. Pictures attached to the ad showed it to be the rental unit in question.

Mr. R.C. seeks the two month rent equivalent penalty in s. 51 as well as moving expenses and the difference between the \$1850.00 rent the tenants were paying for this rental unit and the \$2200.00 rent they were required to pay for their replacement accommodation.

The respondent Ms. A. testifies that their purchase completed on April 27. It is their first property in Canada. They intended to move in and occupy the rental unit but on March 30 Mr. A. lost his job as an owner/operator trucker. He has not found employment since and has truck payments to make.

She says that with the loss of his job the respondents could not afford the mortgage payments if they lived there. Though they had given notice to vacate their own rental accommodation, they were able to renew their tenancy in that rental unit. It is a three bedroom basement suite where they pay \$1200.00 rent. She says the respondents continue to live there with their four children.

Ms. A. says the respondents did not plan for this to happen but circumstances forced them into the present situation.

Mr. A. testified confirming his job loss and current unemployment. He leases his truck and continues to make payments.

In reply Mr. R.C. indicates that he should have been given the opportunity to continue in this rental unit. He agrees that he would not have taken it because his family moved into their present accommodation on April 1.

Analysis

New Legislation

The *Act* was amended in 2018 to change the penalty provision in s. 51 from an amount equivalent to two months' rent to an amount equivalent to twelve months rent. The change was brought into force by the *Tenancy Statutes Amendment Act 2018*, Bill 12-2018. By its transition provisions, the new and larger penalty is to be applied to a Notice of this type that was received after May 16, 2018.

The Notice in question in this proceeding was received in February and so the old, two month, penalty provision applies.

Section 51 Penalty

Section 51, as it then was, provided that if the rental unit the subject of the Notice is not used for the stated purpose in the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, then the purchaser must pay the tenant an amount equivalent to double the monthly rent due under the tenancy agreement.

The *Act* as it then was provided for no exceptions to this rule. Indeed the provision stated that the purchaser "must" pay the penalty. In these circumstances an arbitrator lacks the power to consider extenuating circumstances such as those advanced by the respondents in this case. The purchasers have failed to carry out the stated purpose in the Notice; to occupy the rental unit, for six months' duration starting within a reasonable time following the effective date of the Notice and must pay the penalty.

I award the tenants \$3700.00, being the equivalent of two months' rent.

Damages

It may be that a tenant with a valid claim to the s. 51 penalty provisions would have as well a valid claim for damages against purchaser or the landlord. However, in this case I find that the tenants do not. I am satisfied that the respondents were the victims of unforeseen circumstances which they themselves did not cause or contribute to. They have not committed an intentional wrong nor been guilty of negligence.

For these reasons I dismiss the tenants' claim for damages.

Conclusion

The tenants are entitled to a monetary award of \$3700.00 plus recovery of the \$100.00 filing fee for this application. There will be a monetary order against the respondent purchasers in the amount of \$3800.00.

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

Dated: June 30, 2018

Residential Tenancy Branch