



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW HORIZON DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FFT

Introduction

This hearing dealt with the tenant's application for a Monetary Order for compensation payable to tenants where a landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property* as provided under section 51(2) of the Act. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

The landlord confirmed receipt of the tenant's hearing package and evidence via registered mail. The landlord prepared a response and evidence package and on November 26, 2018 the package was placed in the mailbox at the service address provided by the tenants on their Application for Dispute Resolution. The tenants stated they no longer reside at that address and did not receive the landlord's evidence response. However, the tenants acknowledged that they did not give the landlord a new service address. I was satisfied the landlord met its obligation to serve the tenants with its evidence/response in manner that complies with the Act and the reason it was not received by the tenants is because of the tenants' failure to give the landlord their new service address. Therefore, I informed the parties that I would admit the landlord's response and evidence package but with consideration that the tenants had not seen it, the landlord would also orally describe the submissions during the hearing so that the tenants may respond to them.

Issue(s) to be Decided

Are the tenants entitled to compensation under section 51(2) of the Act because the landlord or purchaser of the property did not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's use of Property*?

Background and Evidence

The one-year fixed term tenancy started in September 26, 2016 and the tenants paid a security deposit of \$1,350.00. After the fixed term expired the tenancy continued on a month to month basis. The tenants were required to pay rent of \$2,750.00 on the first day of every month.

On February 9, 2018 the landlord served the tenants with a *2 Month Notice to End tenancy for Landlord's Use of Property* with an effective date of April 30, 2018 (herein referred to as the "2 Month Notice"). The reason for ending the tenancy, as indicated on the 2 Month Notice was:

- 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 tenants did not pay rent for April 2018 in satisfaction of the compensation payable to tenants who receive a 2 Month Notice, pursuant to section 51(1) of the Act, and returned possession of the rental unit to the landlord late in the evening of April 1, 2018 although some junk was left behind by the tenants. The property title transferred to the purchaser on May 1, 2018.

It was undisputed that after the tenancy ended the rental unit was left vacant and boarded up. The purchaser obtained a demolition permit for the rental unit on July 26, 2018 and the house was torn down shortly after that. Currently, a new house is under construction on the property.

The tenants seek compensation payable under section 51(2) of the Act because they were told by their landlord that the purchaser intended to move into the rental unit and they believed him. However, sometime later, the purchaser came on the property and stated that he intended to demolish the house sometime later.

The landlord's agent testified he received a text message from the purchaser's realtor that the purchaser needed vacant possession of the rental unit because the purchaser intended to move into the rental unit. The landlord's agent acknowledged he did not get such a notice by way of a paper document but the landlord was of the position the text message constitutes written notice. I noted that the text message was not presented as evidence. The landlord's agent stated that he deleted from his phone it as he routinely deletes his text messages every few months and he did not know he would need it. By way of his written submission, the landlord also submitted that during the negotiations for the sale of the property the purchaser's realtor informed the landlord that the purchaser intended to move into the rental unit by way of several oral conversations and text messages. Such text messages were not produced as evidence. Nor, did the landlord call the purchaser or the purchaser's realtor to testify at the hearing.

The landlord submitted that the sales contract required the landlord to give the purchaser vacant possession of the rental unit. A copy of the sales contract was not provided as evidence for this proceeding.

The landlord submitted that it cannot be held responsible for what the purchaser did with the property after title transferred as the landlord has no control over such matters.

The landlord submitted that if the tenants had heard from the purchaser in February 2018 that he intended to demolish the rental unit as they claim occurred the tenants could have contacted him and the landlord could have issued another 2 Month Notice in time to maintain an effective date of April 30, 2018 and indicate the reason for ending the tenancy was to demolish the rental unit. The tenants then waffled on their testimony and indicated that the purchaser was hard to understand as he barely spoke English.

The landlord also pointed out that the tenants failed to pay all of the rent due for March 2018. The parties provided consistent testimony that the tenants withheld the amount of the security deposit from March's rent and a further \$90.00 that the tenants believed they were entitled to receive as interest on their security deposit. I informed the tenants that the interest rate payable on the security deposit is set out by the Residential Tenancy Regulations and that it was 0% for the relevant time period meaning they were entitled to zero dollars as interest on the security deposit. The tenants did not disagree with offsetting the \$90.00 shortfall in rent from any award they may receive with this decision.

The landlord also submitted some evidence in an effort to demonstrate the tenants left junk behind at the property and the landlord incurred a loss of \$1,500.00 to remove the

junk. The male tenant acknowledged that he is a junk hauler and that some junk was left at the property but the tenant was of the position that \$1,500.00 to remove the junk was excessive and the tenants were not agreeable to offsetting this cost for any award they may receive. I informed the landlord's agent that the landlord is at liberty to pursue the tenants for compensation for any damages or loss the landlord may have suffered as a result of the tenant's actions, or lack thereof, that violate the Act by making its own Application for dispute Resolution against the tenants. Accordingly, I did not further consider the landlord's evidence with respect to junk left behind at the property.

Analysis

The reason for ending the tenancy on the 2 Month Notice given to the tenants by the landlord corresponds to section 49(5) of the Act. Section 49(5) provides that a landlord may end the tenancy where all of the following circumstances apply:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. First of which is compensation for receiving the 2 Month Notice provided under section 51(1) and this compensation is equivalent to one month's rent. Additional compensation may be payable to the tenant under section 51(2) where the landlord

does not use the rental unit for the purpose stated on the 2 Month Notice. At the relevant time, the additional compensation payable under section 51(2) was the equivalent of double the monthly rent.

The tenants received the compensation payable under section 51(1) and are seeking compensation pursuant to section 51(2) of the Act by way of this application. Accordingly, the issue for me to determine is whether the tenants are entitled to additional compensation provided under section 51(2) of the Act.

Section 51(2), as it was written when the 2 Month Notice was given to the tenants, provided 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, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis added]

In this case, I accept the unopposed evidence that the rental unit was demolished within six months of the tenancy ending. Accordingly, I find that the purchaser, or close family member of the purchaser, did not occupy the rental unit for the minimum amount of time of six months starting within a reasonable amount of time after the tenancy ended. As such, I find the tenants are entitled to additional compensation pursuant to section 51(2) of the Act. The issue then becomes, are the tenants entitled to receive this compensation from the landlord that gave them the 2 Month Notice?

I accept the landlord's position that the landlord has no control over what the purchaser did with the property after title to the property passed, which is why section 51(2) permits a tenant to pursue the purchaser for additional compensation. However, in this

case, the landlord has not proven that the purchaser requested the landlord to give the tenants a 2 Month Notice on the basis the purchaser or close family member of the purchaser intended to occupy the rental unit, after the conditions of the sales contract were removed. The landlord did not produce any supporting evidence to corroborate its position that the purchaser provided such a written request such as a copy of the written request, even if it were a text message, or request the purchaser or purchaser's agent to produce the document or call the purchaser or purchaser's agent to testify at the hearing. In the absence of evidence to demonstrate the landlord was acting upon the written request of the purchaser, I am of the view the tenants do not have recourse against the purchasers. Accordingly, I find the tenants recourse is against the landlord in this case.

If the landlord relied upon false oral or text message communications of the purchaser or purchaser's agent in issuing the 2 Month Notice to the tenants, the landlord's recourse is against the purchaser or purchaser's agent in the appropriate forum, such as Small Claims court or Civil Resolution Tribunal.

As for the landlord's argument that had the tenants informed him that the purchaser made statements to them that he intended to demolish the rental unit the landlord could have issued another 2 Month Notice in February 2018 to indicate such a reason; however, I reject that position. A 2 Month Notice indicating the rental unit is going to be demolished may only be given after the City has authorized demolition and a demolition permit was not requested or obtained until July 2018.

Although the landlord made submissions that the sales contract required the landlord to give the purchaser vacant possession on May 1, 2018, which I was not provided as evidence for this proceeding, as I stated during the hearing, it is not enough to point to the contract for purchase and sale whereby vacant possession was agreed upon. The landlord had other options to obtain vacant possession of the rental unit, including reaching a mutual agreement with the tenants to end the tenancy, which may have included compensation for the tenants.

In light of the above, I find the tenants have established an entitlement to compensation of double the monthly rent, or \$5,500.00 against the landlord, as requested. Given the tenants' success in this application I further award the tenants recovery of the \$100.00 filing fee paid for this application. Accordingly, I find the tenants entitled to compensation totalling \$5,600.00. I have recognized that the tenants have already benefited from \$90.00 that they withheld from rent from the landlord for the month of

March 2018. Therefore, I provide the tenants with a Monetary Order for the net amount of \$5,510.00 to serve and enforce upon the landlord.

Conclusion

The tenants were successful in this application and have been provided a Monetary Order in the amount of \$5,510.00 to serve and enforce upon the landlord.

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: December 11, 2018

Residential Tenancy Branch